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SENATE—*Saturday, September 27, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 8 a.m., 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.

Lord, give us ears to hear, hearts to receive, and the will to obey Your word.

Though I speak with the tongues of men and of angels, and have not love, I am become as sounding brass, or a tinkling cymbal. And though I have the gift of prophecy, and understand all mysteries, and all knowledge; and though I have all faith, so that I could remove mountains, and have not love, I am nothing. And though I bestow all my goods to feed the poor, and though I give my body to be burned, and have not love, it profiteth me nothing. Love suffereth long, and is kind; love envieth not; love vaunteth not itself, is not puffed up, Doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil; Rejoiceth not in iniquity, but rejoiceth in the truth; Beareth all things, believeth all things, hopeth all things, endureth all things. Love never faileth: but whether there be prophecies, they shall fail; whether there be tongues, they shall ease; whether there be knowledge, it shall vanish away. For we know in part, and we prophesy in part. But when that which is perfect is come, then that which is in part shall be done away. When I was a child, I spake as a child, I understood as a child. I thought as a child: but when I became a man, I put away childish things. For now we see through a glass, darkly; but then face to face: now I know in part; but then shall I know even as also I am known. And now abideth faith, hope, love, these three; but the greatest of these is love.—I Corinthians 13. Amen.

RECOGNITION OF THE ASSISTANT MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished and able assistant majority leader is now recognized.

THE CHAPLAIN'S PRAYER

Mr. SIMPSON. Mr. President, how very topical are the remarks of our Senate Chaplain as he touches us deeply with the currency of his message. That is, of course, one of the inspirational parts of the Bible. The 13th chapter of First Corinthians, if I recall, not being a complete student, I can assure you, of that particular book, but knowing hopeful parts of it that guide us in our lives.

It is a powerful statement.

We will need all of that today. I think there is good spirit as we proceed. We have much to do. We had a late night last night and I commend Senator PACKWOOD and Senator BYRD in closing up the shop in the early hours and Senator BYRD is right here again this morning, and Senator PACKWOOD also.

SCHEDULE

Mr. SIMPSON. The convening hour is here. All time until 4 p.m. is divided for Senators to speak on the tax reform conference report by previous unanimous consent. Also by previous consent, a vote will occur on the adoption of the conference report no later than 4 p.m. today.

Following the disposition of the conference report, the Senate will resume consideration of the drug reform bill. Therefore, votes will occur during today's session.

Also, for the information of all Senators, if you have indicated to the leadership that you intend to speak today on the conference report, you are urged to be prompt in that effort and make the statements as brief as possible—if that is possible!

With that, I believe there is no leadership time reserved, but I certainly yield to the Democratic leader, Senator BYRD.

THE CHAPLAIN'S PRAYER

Mr. BYRD. Mr. President, let me share the distinguished acting Republican leader's observations about the Chaplain's prayer.

The Chaplain's prayer was a prayer of scriptural reading. And what is more inspirational than reading from God's word? Man adds nothing; man can only subtract.

I think it is well that we take a moment and reflect upon the prayer of the Chaplain and recall that our forefathers believed in God and that all throughout our history there runs that continuous thread of belief in a divine being.

The country will soon observe its 200th birthday, and I refer to the writing of the Constitution. The country has been here for millions or billions of years, but the Constitution was written by our illustrious forebears in Philadelphia, the City of Brotherly Love, 200 years ago next summer.

During those long 3 months, in that hot Philadelphia summer, our forefathers labored, argued, and, at times, it seems that their labors would end in vain. There was much divisiveness and quarreling.

One day Benjamin Franklin stood and addressed the Chair in which sat Gen. George Washington. Franklin said:

> Sir, I have lived a long time. And the longer I live, the more convincing proofs I see that God still governs in the affairs of men. If a sparrow cannot fall to the ground without our Father's notice, is it possible that we could build an empire without our Father's aid? I believe the sacred writings, sir, which say, "except the Lord build the house, they labor in vain that build it. Except the Lord keep the city, the watchman waketh but in vain."

The oldest man at that gathering went on to say:

> I move you, sir, that henceforth we begin our deliberations with prayer, else we shall

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

succeed no better than did the builders of Babel.

That should be a lesson to all of us. Franklin's motion was agreed to, the deliberations moved forward, and out of that Constitutional Convention came the greatest document of its kind that was ever written—the Constitution of the United States.

Franklin's words came, as they did, from a wise man, a man of varied experience, a man of great vision. Franklin spoke in that great gathering of men—Washington, the General of the Armies at Valley Forge, the future first President of the United States. Franklin had the boldness and the good sense to stand and reflect openly and publicly as I have quoted him.

Yet, today, God's name is often used but only in vain. We pause too seldomly to reflect upon His goodness to us, and the blessings that He has showered upon this Nation. I am glad that, once, at least once every day, we do pause to reflect upon His works. "* * * except the Lord build the house, they labor in vain that build it."

I indicated last night that I would take 10 minutes to speak on the tax conference report. I have taken my 10 minutes to speak on something far more worthy.

Mr. SIMPSON. Mr. President, that was a very moving revelation by the Democratic leader. He is our historian. He is the person that shares with us the most about the history of this institution that we love and cherish, and is truly a student of our nascent growth and the Senate's growth as a legislative body. Another example of that was his very moving commentary about those early beginnings.

I indeed thank him for that.

(The remarks of Mr. BYRD at this point relating to the conference report on the tax bill are printed later in today's RECORD.)

Mr. SIMPSON. It is my peripheral vision that now notes the Senator from Oregon beginning to pace, which is his wont. I do not believe there is any time for the leader, and therefore——

Mr. PACKWOOD. Actually, if I might interrupt the acting leader, in our unanimous consent we agreed that the time between 8 and 9 o'clock would not be charged to our time. We hope to have speakers here at 8:15 and another 9:30. And that time will be charged. Until they arrive, and we have no speakers, we would be perfectly agreeable to go on.

Mr. SIMPSON. I do have a comment or two, but it has nothing to do with First Corinthians or the early history of our legislation and our legislature.

There are those here in this Chamber who are interested, I think, in this issue of which I shall speak so I will take 5 minutes and yield to myself what time is really unyieldable and comment very briefly on immigration.

IMMIGRATION LEGISLATION

Mr. SIMPSON. Mr. President, I know the occupant of the chair, the chairman of the Judiciary Committee, Mr. THURMOND, has been the most extraordinarily supportive and gracious chairman that I could ever have to deal with on this issue, which again I say, as I have said many times before is fraught with emotion, fear, guilt, and racism. Yesterday, the great engines of immigration reform churned the craft into the shoals of the House of Representatives. There is really no need to place blame. There is surely enough blame to go around when you get to this very emotional issue. But it would be very unfortunate to say that it fell aground on the issue of partisanship.

The issue is not a partisan issue. It passed this Senate three times in past years by substantial votes, 80 to 19, 76 to 18, and 69 to 30 was the last time. If we keep going, we will slip down under 50 before we know it because people seek perfection somehow in this particular legislation. There is no such thing a perfection in legislation any more than there is perfection in our lives.

The steady players have remained the same over there, Congressman RODINO, Congressman MAZZOLI, Mr. FISH, and Mr. LUNGREN. A new and bright player CHUCK SCHUMER, a Democrat from Brooklyn, felt he had the key to perhaps getting it out of the House with his proposal. That did not prove to be so. It proved to be very contentious. It was an issue that had to do with guest-workers, if you will, or at least agricultural labor. And that is a very contentious issue, obviously.

The problem was with the crafting of a rule. And in the crafting of the rule it was felt that there was an exclusion of a side, and that one of the sides would not be heard under the crafting of the rule and thus arose the specter of partisanship which is, I believe, more intense in the House than here. That is a reality. I think that comes from a House that has remained in control of one party for so many years.

It is a cleansing experience to have a legislative body change its party leadership, and party majority. I would say that—and I have said it—about Republican-controlled legislative bodies. I really do believe that. I said that about our own legislature when I was a member of the majority party in Wyoming.

You do not really need to sweep house with the member players. You need to sweep house with the encrusted staff down underneath who watch the Mazzolis come forward or the Lungrens come forward in recent years and they kind of chuckle and say, "Oh, wait a minute. Somebody did that back in 1960. It did not work then, and you don't want to mess around with that." They become cynical staff. That it what I find when you see the encrusted staff of either party who become barnacles to show us in what we try to do as we press and slide forward with our fragile barks in this place. But I think they put an exquisite twist on the rack over there while trying to get their fingerprints off the windpipe after the assault. That is always difficult to do.

I do not think the Republicans in the House brought down immigration reform. I do not believe that at all. That would be an absurd statement, any more than that the Democrats brought down immigration reform.

I noted the morning press comment of Mr. Wade Henderson of the ACLU, for whom I have the greatest respect. He is a remarkable young man. He was laying a bit on DAN LUNGREN. Yet in this session, as I say there is a seeking of perfection, and that organization, I think, sometimes only fuels the confusion, the chaos, and the discrimination that is present in the status quo. The status quo in America is that there are 3 to 12 million human beings here being used and exploited. This bill would have legalized their presence in the United States. I think it was a worthy goal.

□ 0820

But at least the organization was half right in the comment that I noted this morning.

It is that the greed of the growers in the perishable fruit and crop industry, particularly in the west coast area is insatiable. I do say that clearly and that is not said in harshness or vituperation. It is the total reality of immigration reform.

There is no way that they can be satisfied. Their entire function in life is that when the figs are ready, the figs should be harvested and if they need 4,000 human beings to do that, they do not want to mess around with the Department of Labor or the ordinary procedures of the H-2 Worker Program, which is used very well in many States, including the State of the Democratic leader. The H-2 Program is not used because the other is so abused.

So, the greed of the growers brings it down one more time and yet the irony of it is that only 8 to 15 percent of the illegal undocumented persons work in agriculture.

So as we fiddle around with the issue—watching this tremendous tail which is larger than a mastodon's tusk controlling the whole body of immigration reform, which is about the size of a pack rat, then you know something is out of whack in America and these growers make it out of whack.

So, I hope the people of America will now really turn their attention to that particular group and maybe ask them

if they are so dependent upon illegal, undocumented, exploited people that they will go broke, and if that is the case, then let us find that out on the floor of the legislature instead of dabbling in the revelry of what we do here. That is the issue and that is the issue that should be addressed.

I would just say, too, that the President has always been right there with us on immigration reform. He has always been willing to meet with Congressman RODINO and the rest of us on the issue. It would be most unfortunate and unfair to say that he was somehow at the root of the failure of the legislation.

The failure of the legislation came in the agriculture area with an amendment that was very thoughtfully presented which would have essentially allowed a person to receive a green card, the "creme de la creme" of entry into the United States, if they worked in agriculture for only 60 man-days a year.

That is what brought it down. There is not a question in my mind that we could not have resolved our differences on that in conference, but so it is. And the irony of that measure would have been that those people—such as these literally toiling within yards of our Capitol building who labor as dishwashers and construction crewmen and have been here for 5, 6, 10 years, and established equities, and often given birth to U.S. citizen children would not have received the same status. They would have received a lesser status than someone who had been here for 60 days working in agriculture, and that was the reason the President could not come aboard. He would have, I think, vetoed the bill if that had remained, but there was not a question in anyone's mind we could not have resolved that in conference.

So that is a little bit of a relation of where we are. The interesting thing about this arena is you do not really have time to exult in victory, but that gives you the opportunity not to have the time either to be morose in defeat. You just move on to another item.

So, I share with my colleagues that there are still some days left in the session and it will not be my intent to belabor it or go off in the corner and pout and think of greater days. But as that famous coach of the old Washington Bullets said, "the opera is not over until the fat lady sings," and additionally it is baseball season, too. I have seen some games go 24 innings. Maybe we can yet present something to the House which will enable them to act because I know that if they get to an honest up or down vote there will be, I think, a good expression of support.

That vote has not been able to be attained. Maybe it can, but I do not choose to take any of my colleagues through the jumps over here, but we shall see what we might do. The House Rules Committee may meet again. I think they well may do that over there. In an hour they could craft a new rule which would give an up and down vote on that agriculture issue and then we would see what would occur.

If nothing does occur this year, it will be my honest intent, without any sense of petulance, as I say, to go forward next year in my duties, God willing, in the majority or in the minority—and, of course, I fully assume that that we will be the majority—and I shall work toward the corrections that need to be accomplished with legal immigration in America because we have a situation where we have lost track of the need for seed immigrants, we have a huge and rather distorted legal immigration theme working out. Senator KENNEDY is interested in some new legislation with regard to Irish immigration, others seek a reexamination of preferences, exclusions under McCarran-Walters, and those kinds of things. We would await the House of Representatives to send us something, and I think that sometime next year they will, because I think there are serious pressures on the United States and the Congress when we have a 1.8 million people crossing our borders illegally last year from 81 different nations and here we wonder about and debate and discuss here terrorism and illegal drugs.

I have never used the immigration bill to excite people on those lines, and I will not, or that it was a jobs bill.

But I think that obviously if you are going to talk about the security and the sovereignty of a country you have to control your borders. It is that simple.

It is no xenophobia. It is reality.

And I have been watching carefully. The Senator from Oregon is still pacing and no one is here at the present time.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. SIMPSON. Indeed I yield to the Democratic leader.

Mr. BYRD. Mr. President, Plato thanked the gods for having lived in the age of Socrates.

May I say to the distinguished Senator who has tried and tried again to get an immigration bill enacted, it was not perfect, as no legislation is ever perfect, but immigration legislation is needed. He has seen it fail more than once.

Yet, I hope that the distinguished majority whip will take comfort that another great philosopher, Plato, I am told, wrote the opening sentence of the Republic 16 times before he was satisfied.

Thomas Carlyle once after years of labor loaned a friend a transcript of his new book to read and to comment on to him, the author. The friend's house burned down and with it the cherished work of Carlyle. But Carlyle set to work again and brought forth an even greater product than the earlier one.

So I hope the distinguished majority whip will not be discouraged.

I have found after many, many years that there is nothing like patience and tenacity. When those two virtues are combined one may marvel, "What hath God wrought?"

So take comfort, my friend.

□ 0830

I shall stand with him the next time around again.

Mr. SIMPSON. I thank the Democratic leader for good counsel and friendly advice which I have learned to accept in my time as assistant majority leader. I appreciate that very much. It is just that the midwifery of it all gets heavy. The body remains very heavy and I would like to deliver the whole thing some day.

Mr. BYRD. "The spirit is willing, but the flesh is weak."

Mr. SIMPSON. But I do appreciate that.

Does the Senator from Oregon wish to comment?

Mr. PACKWOOD. No, I could not add anything to the philosphy that has already been expressed by the Democrat and Republican leaders today. I am still exercising patience in the hopes that some of our speakers will show up.

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

I do recall a marvelous bit of philosphy which was entitled "Press On," and it talked about the omnipotence, perseverence, and how someone would say, "He was marvelously educated and yet he was an educated derelict, unfortunately," or, "He had this advantage, but unfortunately he did not take advantage of it."

So I would enter that little squib into the record. It is a dandy, and I wish I remembered it all.

Somewhere along the line we all end up where we have to walk the walk instead of talk the talk. That is what this place is about. You can wait for perfection and it will never come. The best way to do it is just to put your head down and plow along. That is what I like to do. I must be a perverse rascal. The Senator from Oregon knows that feeling and the Senator from West Virginia has proven that in his legislative career. You just keep plowing and eventually you get the job done.

Mr. BYRD. Mr. President, I thank the distinguished Senator for the service that he renders daily.

Mr. PROXMIRE addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Wisconsin.

Mr. PROXMIRE. I thank the distinguished President pro tempore.

I might say that the distinguished minority leader never falters. He always comes through with his marvelous sense of humor. He is a great asset to this body. I cannot stand for his downgrading this great talent that he has.

Mr. BYRD. Will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. BYRD. Words fitly spoken are like apples of gold in pictures of silver. I thank the distinguished Senator for his kind and overly charitable remarks. They have given me the tonic that I need for this long day.

Mr. PROXMIRE. I thank my good friend from West Virginia. With the possible exception of George Will, nobody can come up with these quotations better than the minority leader.

IS STAR WARS BAD FOR THE NATION'S SCIENTIFIC PROGRESS?

Mr. PROXMIRE. Mr. President, SDI spinoffs cannot begin to justify the hundreds of billions of dollars this Nation is expected to pour into this project. Recently I contended on the floor that the scientific advances achieved through SDI side effects could be accomplished far more quickly and with a great deal less cost by research aimed directly at the problem. For example, if we need research to improve our conventional arms, we should appropriate money expressly for the purpose of achieving breakthroughs in conventional arms. We should not rely on the happenstance that in trying to build a shield of battle stations to stop adversary ICBM's we may stumble across a development that will enhance the quality of our planes or tanks or attack submarines.

Mr. President, this Senator herewith apologizes for that speech. I was wrong. I was wrong because I badly understated the case against star wars spinoffs. The fact is that SDI will not enhance scientific progress even a little. No, not by erratic, marginal amounts. The fact is that SDI or star wars will retard, and I mean seriously retard, scientific progress in other fields in our country including conventional arms, health, and in this country's industry and commerce. Why is this the case? An article in the September issue of Dun's Business Month by Fred Guterl tells why. The article quotes Arvid Larson, principal at Booz Allen & Hamilton and a consultant to SDI. Larson says, "Most of the technology in SDI just doesn't have any equivalent application in the commercial sector." Edward David, White House Science Adviser to President Nixon, hits the most significant consequence of SDI for American business. He says, "Mega projects like SDI take some of the most sophisticated and best people away from commercial R&D." Mr. David goes on to charge that SDI recruitment has already taken so many researchers from computer related fields that there are few left for civilian pursuits. "In the meantime our manufacturing technology is going to the dogs."

Now, Mr. President, to date this may be an exaggeration but the fierce effect of the brain drain is just beginning. Star wars has been budgeted at about $2 to $3 billion in the last couple of years. It will be budgeted at about $3.5 billion in 1987. That makes it easily the Nation's biggest technology project. But if it is to proceed on schedule it will rapidly become the, and I mean the Nation's overwhelmingly dominant and almost exclusive technology project all by itself. We are not talking about $3 or $4 or $5 billion programs in the future. By 1994 we are talking $90 billion, and hundreds of billions if SDI is ever built and deployed. What does that mean? That means that literally tens of thousands of the Nation's best scientists will be yanked away from conventional weapons research, from safety and health research, from automotive and aeronautic research, and from research designed to make a cleaner environment. They will be put to work to build an impenetrable rainbow that will try to protect our country from incoming nuclear ICBM's.

Can there be any question that each and every one of these fields will make far less of the crucial scientific progress that is so important for our country?

And that is not all.

Mr. President, there are at least two reasons that I have not mentioned why the so-called spinoffs from SDI will be minimal at best and cannot begin to match the loss in scientific progress to this country caused by the diversion of so much of our scientific genius to this hapless, hopeless project. First, as Mr. Guteri points out: "The lion's share of SDI funds are tagged for the development of highly specialized weapons." Think of it, only 3 percent of the SDI budget goes for basic research into broadly applicable technologies. Where does it go? Three-quarters of it goes to defense contractors such as Boeing. Twenty percent goes to Department of Energy laboratories. Oh, sure, some spinoffs may emerge even from this work, but they are very rare, indeed.

Second, Mr. President, virtually every SDI program is classified at least in part. As David Williamson, a policy consultant to NASA has said, "If it's classified, it will sit behind green doors." Obviously the commercial and the industrial sector of our economy is shut out of classified research, so are researchers anxious to pursue health and safty research that could effect the development of cures for cancer.

Perhaps the most eloquent testimony on the failure of SDI spinoffs to compensate for the loss of scientific genius to humane purposes by star wars is personified in the case of Peter Hagelstein. Hagelstein came to research work at the Livermore laboratory as a 22-year-old genius 10 years ago. He came because he dreamed that the super equipment at Livermore might help him develop research that could lead to a cancer cure. He succeeded at Livermore in developing a laser in 1979 that led to the major breakthrough that convinced some that SDI might work in part to defend against an enemy nuclear attack. Here was a young man who epitomized the kind of scientific talent that would enormously advance our struggle against cancer. And what was he doing? He was devoting that ability to star wars. Well, a few weeks ago Hagelstein quit the SDI project. He quit at least in part because he found his great laser breakthrough was most likely to be used primarily for offensive antisatellite purposes. Just think what those 10 years Hagelstein devoted to SDI research might have done for cancer research. Mr. President, multiply that story of this young scientist by the other scientists, the other Peter Hagelsteins currently working on SDI and the far more who will be diverted to it in the future. Of course, there will be an occasional spinoff for a constructive purpose. But the net effect is sure to be a very big loss for this country and for humanity, too, as one of this Nation's most precious assets, its scientific genius, is squandered on this empty dream of star wars.

MYTH OF THE DAY: THE BIGEYE BOMB WORKS

Mr. PROXMIRE. Mr. President, the myth of the day is that the Bigeye bomb works well. The Senate has funded it. It should work well. But it does not.

Nothing has changed since the GAO reported in May that the Bigeye bomb just does not work well.

The GAO, believes, Mr. President, that the Bigeye has not met its technical specifications.

GAO reports that test results to date present major and continuing inconsistencies, test criteria are ambiguous and uncertain, and solutions to the technical problems have only made things worse.

Technical fixes are causing operational problems and uncertainties. In the case of the Bigeye, the cure just might be worse than the disease.

Also, Mr. President, it is questionable whether or not the unitary chemicals inside the bomb will mix

properly and make a binary weapon at the right time. And it is also probable that American pilots dropping the bomb will be vulnerable to attack by enemy air defenses.

Some argue, Mr. President, that any chemical defense, even an inadequate one, is better than no defense at all. They say that the Bigeye bomb serves as a deterrent to a more deadly defense, nuclear weapons, that could or might be used by this country if we had nothing else.

Others simply say that the ability to retaliate with chemical weapons will increase the possibility of a nuclear war.

Mr. President, I am not here to argue either of these points.

I am here, however, to see that the American taxpayers get adequate bang for their bucks. Giving the public the false hope that the Bigeye bomb works because the Senate voted to authorize a 5-year, $1 billion production program, is nothing more than a myth.

Let us face it, right now we have a dud. This is not a fancy 20th-century weapon. The Bigeye bomb is nothing more than a long and painful experiment that the Defense Department has been developing for the last 23 years.

And, Mr. President, after 23 years of research and development it still does not work and yet we voted to authorize 5 years of production funding.

□ 0840

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

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

Mr. PACKWOOD. Mr. President, I yield 10 minutes to the Senator from New Mexico [Mr. DOMENICI].

The PRESIDENT pro tempore. The able Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I thank my friend from Oregon.

TAX REFORM, ACT OF 1986—CONFERENCE REPORT

Mr. DOMENICI. Mr. President, we have arrived at a historic moment in the U.S. Senate and in America. Obviously, a number of Senators have taken to the floor of the Senate and talked about the shortcomings of this tax reform bill. A number have taken to the floor to talk about the positives, the good things, the benefits of this new bill. I just want to take one moment, right at the beginning, to talk a bit about the past tax laws, because basically, I am going to support this bill.

I have come to the conclusion, especially over the last 3 or 4 weeks, that indeed, it deserves the overwhelming support of the U.S. Senate and the American people. But just one word about all of those statements that have been made about the new tax reform, the new law of the land on taxes, and the inequities that people claim are existent within it.

I only wish we would have had time to go into the current tax laws and cite for the U.S. Senate and the American people—I think they already know—the literally thousands of inequities in the law that now exists. For those who think it is unfair that a renter might not be getting quite as good a break as a homeowner under this new code, just imagine how many hundreds and hundreds of tax shelters exist which make millions and millions of Americans say, how come the other fellow pays less taxes and earns about the same amount as I do? In essence, as I look at this, this is hallmark legislation for a number of reasons. We had filled our Tax Codes with shelters, with exemptions, with preferences, for 40 years and it was like a great brick wall, with all different colored bricks, all affecting people differently. This is a historic effort to start anew.

No army is as powerful as an idea whose time has come. The idea is the Tax Reform Act of 1986. So the time is now. That is probably the most powerful idea around.

The American people want tax reform because our system is too complicated, it is inequitable, it interferes with economic choices of households and businesses. This country needs it because our system is a voluntary system, nourished by general taxpayer support which depends on taxpayers' confidence in the fairness of the system.

Over the years, the Tax Code's integrity has been compromised. The size of the underground economy is evidence that compliance has been decreasing. Our underground economy is the seventh largest economy in the world, in excess of $100 billion. Four out of five taxpayers, from what I can discern, look around and say already, at this point, why should I be paying my taxes when others are not paying theirs?

Some have argued that this unfairness is more a perception than a reality. However, the perception is that fairness is eroded by layer upon layer of tax loopholes and shelters. Costs have grown over the years.

In 1967, the value was about $37 billion. The value of all loopholes will now, this year, if we do not carry out this reform, be over $400 billion. This bill eliminates a majority of those loopholes and abuses. It is not perfect but it is fairer than what we have now. Some of these shelters will survive and maybe they should not, but it does go far, far in other areas to make the law more equitable and to make investment in the American economy more neutral.

The bedrock of this tax reform is that people who earn the same amount of money should pay approximately the same amount of taxes—a simple, commonsense proposition. I think it is time we returned to that basic premise. I look around the world and I see some countries—France, for instance—where, when you earn a lot of money, their laws are so complicated that you literally negotiate your tax return with a tax collector. Think what would happen in America if we relied up that instead of the voluntary paying of taxes.

(Mr. PACKWOOD assumed the Chair.)

Mr. DOMENICI. Mr. President, I see my friend from Washington on the floor. I understand he has a time problem. I shall be glad to yield to him. If I have a couple of minutes at the end, I shall just wrap mine up.

Is the Senator prepared to proceed?

Mr. GORTON. Mr. President, I greatly appreciate that kind offer. The Senator from Washington is prepared to proceed.

Mr. DOMENICI. I yield whatever time I have remaining to the Senator from Washington.

Mr. GORTON. I thank my friend from New Mexico.

Mr. President, it is nearly 73 years to the day that this body first approved a permanent income tax law for this country. This new law—which passed on October 1, 1913—was described by its authors as a response to "the general demand for justice in taxation and to the longstanding need of an elastic and productive system of revenue." They predicted that, once the bill was put in place, the new law would "meet with as much general satisfaction as any tax law" and that "all good citizens * * * will willingly and cheerfully support and sustain this, the fairest and cheapest of all taxes."

It did not turn out exactly that way. In the 73 years since these words were written, Congress has expanded, remodeled, refashioned, and revised the Tax Code. The first tax brackets were set at rates between 1 percent and 7 percent—rates have since been, on occasion, above 90 percent. The income tax, which was initially levied on a select few, is now paid by many—indeed, too many—individuals.

Numerous deductions and credits have been added to the code as Congress has increasingly come to view the Tax Code not simply as a revenue-raising system, but as a tool to achieve all sorts of social goals—not always successfully.

In recent years, the Tax Code has become so complex and confusing that even the smartest and most sophisticated taxpayers are frustrated by the task of filling out a tax form. Perhaps the most dramatic symptom of this is the industry of tax avoidance that has

grown up around the Tax Code. I am not speaking of ordinary financial planners. I mean the growth of an entire industry that has developed with the goal of trying to structure investments and economic activity simply to avoid taxation. The impression has grown—an impression which unfortunately has much basis in truth—that too many people are getting away without paying their fair share of taxes. This perception is a serious problem in a country that has always had a tradition of voluntary tax compliance.

Mr. President, as a result, today there is once again a "general demand for justice in taxation." There is a significant lack of the "willing and cheerful support" of the Tax Code that was first envisioned in 1913. As a result, Congress has spent 2 arduous years studying and considering this tax reform bill. The distinguished chairman of the Senate Finance Committee and the ranking minority member are to be commended for reporting a bill which, regardless of whether one supports or opposes it, is clearly a serious effort at true tax reform.

□ 0850

I regard my vote on this measure as one of the most important of my Senate career. I have labored long and hard studying the proposal, and have sought the opinions of innumerable constituents, tax experts, and others. In my mind, the bill must be evaluated against fundamental criteria of fairness and the long-run impact on our economic well-being.

For me, a vital consideration was whether my constituents in Washington State would be treated fairly under the bill. I particularly feared that the citizens of the State of Washington would bear a disproportionate tax burden as a result of this reform. I still believe that the repeal of the sales tax deduction, which affects nearly all itemizers in the State of Washington, unfairly penalizes my constituents. No one knows better how opposed I am to this provision than my friend from Oregon, and Senators EVANS, GRAMM, and ABDNOR, who joined with me successfully to amend the bill with a partial restoration of this provision during debate on the Senate version of this bill.

I recognize, however, that although repealing the sales tax deduction is disadvantageous to the 25 to 30 percent of the taxpayers in my State who claim that deduction, most individual taxpayers of the State of Washington will still see lower tax bills. Indeed, citizens of Washington as a group will save more money than citizens from many of the income tax States because those States income taxes will automatically increase as a result of the broadened definition of adjusted gross income, on which those systems are typically based.

This feature does not make the repeal of the deductibility of State and local sales taxes right. It does not justify the provision, which will interfere with sales-tax dependent States Tax Codes. It does, however, make it clear that all taxpayers in this country will bear the burden of this bill and secure its benefits, and that residents of exclusive sales tax States, like Washington, will gain benefits which are at least equal to the benefits accruing to residents of income tax States.

I have other concerns about the bill. Like many of my constituents, I worry about the effects of repealing the investment tax credit and the special treatment of capital gains. The latter has been part of the Tax Code since the Revenue Act of 1921, and I am especially troubled that its repeal is not accompanied by indexation for inflation on the basis of capital gains. This is especially important in my State because of its critical role in the timber industry, a mainstay of my State's economy.

I am also concerned that some taxpayers will be significantly penalized by retroactive provisions in the bill—especially Federal employees who will be penalized by the repeal of the 3-year basis recovery rule. These people planned wisely for their retirement, but could not predict that Congress would change the rules midstream. Similarly, real estate partnership investors should not have to pay taxes under a different set of rules that applies when they made their investment.

Finally, I am concerned about the absence of greater savings incentives in the bill, particularly in light of the long-run decline in investment as a share of gross national product since the 1950's.

I also believe, however, that there are some enormously positive provisions in the bill. Dramatically lower tax rates will help ensure that our investment decisions are made on economic grounds, and not because of tax considerations. I believe that this will direct resources to their highest and best uses, and contribute to growth, and to job creation.

The bill will take 6 million lower income people off the tax roles—people who should never have been taxed in the first place, but are taxed under the current income Tax Code as a result of the bracket creep and inflation of the 1970's. The great increase in the personal exemption and standard deduction will also contribute to a fairer distribution of the tax burden. Perhaps most importantly, this bill contains a stiff minimum income tax. That will help ensure that wealthy individuals and large, profitable corporations will no longer escape paying their fair share of taxes.

In the past several months I have studied this bill. I have thoroughly weighed its provisions—the good against the bad. I have concluded that we will never be able to predict with certainty all of the effects of the bill, and so my decision must necessarily be made with considerable uncertainty. If we were to require certainty as a condition of adopting changes, however, we would never make any changes at all.

Mr. President, there are many flaws in this bill. It is far short of ideal. If my choice were between this bill and my ideal measure, the choice would be clear, and I would reject this bill. But that is not the choice. Instead, the choice is to pass this bill or to retain current law. On that score, Mr. President, I must support this bill because it is a significant improvement over current law. After reviewing the testimony, and this debate I am convinced that the long-run impact of this bill on the economy will be positive. The deterioration of our current tax system cannot continue. We have the chance to stop it now, and once again to take a major, if incomplete, step toward the "justice in taxation" that must always be our goal.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 0900

Mr. CHAFEE. 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. CHAFEE. Mr. President, I ask unanimous consent that I be permitted to proceed for 10 minutes, without prejudice to the special order for the Senator from Ohio.

The PRESIDING OFFICER. Is there objection?

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

Mr. CHAFEE. Mr. President, I change that to 5 minutes.

Mr. PACKWOOD. I yield 5 minutes to the Senator from Rhode Island.

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

Mr. CHAFEE. I thank the distinguished chairman of the committee.

Mr. President, it is with great pride and hopefulness that I stand here today to urge my colleagues to approve the Tax Reform Act of 1986. This is truly a historic occasion and an opportunity to participate in what President Reagan has correctly termed a "revolution."

A vote for this tax reform bill is a vote to free 6 million Americans, who are currently living below the poverty

level, from the tax rolls. Eighty percent of all taxpayers will pay taxes at no more than 15 percent of their income.

The biggest beneficiaries of this bill are ordinary taxpayers who have no access to high-priced lawyers and lobbyists. These are the people who file the short form on April 15. They do not itemize, they take the standard deduction and their personal exemptions, and then they pay whatever tax rate the form says. They do not have tax shelters. They do not have any of the special tax credits, deductions or exemptions we have been debating for 2 years. They are real winners.

For those of us who worked closely on this legislation over the past 2 years, the voices of these ordinary taxpayers were often hard to hear over the enormous volume of the special interests clamoring for continuation of all special tax deductions, credits, and exemptions which were on the chopping block.

Well, those voices of ordinary taxpayers may not have been loud, but they were heard.

We have been working on this tax reform bill for 2 long years. The Treasury Department sent its recommendations to the President in the fall of 1984. The President sent his proposal to the Congress in the spring of 1985. The House Committee on Ways and Means marked up a bill in the fall of 1985, and after two trys the House finally passed a bill last December.

In March of this year, Chairman PACKWOOD unveiled his proposal for tax reform, and we are all too familiar with the unfortunate debacle that followed in the Finance Committee. But thanks to the determination of the chairman and the dedication of our small core group, we were able to wipe the slate clean and start over. The tax reform bill which emerged from the Senate Finance Committee was indeed a miracle, and it passed this body by a vote of 97 to 3—a proud moment indeed.

I wish I could say that the bill we are passing here today was the Senate version of the bill, but it is not. There were compromises with the House, and I will be the first to say that I was disappointed with some of these compromises.

I am disappointed, for example, in the retroactive application of some of the provisions, including new provisions adversely affecting Federal workers. These people have been unfairly treated and the responsibility lies with the House, which refused their pleas.

I am also disappointed, to cite another example, that we are severely restricting the ability of States to use tax-free bonds in future years.

But I do not want to dwell on the imperfections. Overall, they are few in comparison to the positive elements of this legislation, which holds true to the spirit of true reform.

We are not overhauling the Tax Code to get more money for the Federal Government. This bill is before us because the existing code is unfair, promotes economic inefficiency and is maddeningly complex.

By eliminating a host of special tax preferences, this bill assures that individuals with similar incomes will pay similar amounts of tax. By instituting a tough, inescapable minimum tax, we have assured that no matter what special tax incentives wealthy individuals or profitable corporations use, they will be required to pay a minimum amount of tax.

We did not eliminate every deduction, credit and exemption, but we did clean house. There was an awful lot to throw out. In 1970, we collected $2.88 for every dollar not collected because of loopholes. In 1984, we collected only 98 cents for every dollar of tax expenditures. Tax expenditures grew from $37 billion in 1967 to over $400 billion in 1985.

Because of these special tax breaks, the public has increasingly lost confidence in the fairness of our tax system. Above all else, this bill will help restore that confidence.

Meanwhile, economic experts have begun to recognize that tax incentives are often not only expensive, but inefficient as well. Too many investment decisions are being made under the current law for tax advantages, not economic advantage.

This tax reform bill eliminates a great deal of the incentive for inefficiency. With this bill, capital will begin to flow to its most productive use. Businesses will base their decisions on how to make the most real economic profit, not on how to make a losing proposition yield income from other taxpayers.

There will have to be adjustments in the short term. In the long run, however, this bill is premised on the fact that the ultimate burden of competitiveness lies not with the government, but with the private sector. This tax reform bill will reduce government interference in private business decisions. Over the long run, it will increase economic growth and productivity.

There is a third major benefit of this bill—simplicity. Americans may not be able to file tax returns on a form that fits on a postcard, but much of the needless complexity of the current law has been removed.

The vast majority of Americans will pay either no taxes or will pay at a single 15 percent rate. Far fewer taxpayers will be forced to hire lawyers and accountants to translate the arcane complexities of the present law into understandable English.

In summary, Mr. President, this bill is of monumental significance. We all have qualms about certain provisions. But in its total impact, this legislation is so superior to current law that no one should hesitate for a moment in voting for it.

For the sake of farmers, for the cause of economic efficiency, and in the interests of promoting simplicity, I urge my colleagues to support this bill.

Mr. President, I thank the minority leader and the Senator from Ohio.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio now controls 3 hours.

The Senator from Ohio is recognized.

Mr. BYRD. Mr. President will the distinguished Senator yield?

Mr. METZENBAUM. I yield.

Mr. BYRD. Mr. President, I thank the Senator from Ohio for being on the Senate floor at the appointed time, in compliance with the order for his recognition at this time, for the use of 3 hours. I hope other Senators will be prepared during the day to take their turns back-to-back, if possible, because under the order, the Senate will vote no later than 4 p.m. on adoption of the conference report.

Again, I thank the distinguished Senator for his cooperation.

Mr. METZENBAUM. I thank the distinguished minority leader for his comments.

Mr. President, if is my understanding that my 3 hours need not be taken in one total segment and that it can be divided.

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. Mr. President, I have been advised by some of those who work in the Senate that Senator ZORINSKY is on his way to the floor and wishes to speak for 3½ minutes. I have no objection to his doing that, but I would not want to interrupt my remarks. Under the circumstances, unless the Senator from Oregon or the Senator from West Virginia have objection, I would suggest the absence of a quorum and ask unanimous consent that it not be charged against my time.

Mr. PACKWOOD. Mr. President, reserving the right to object, I did not hear the request.

Mr. METZENBAUM. Under the circumstances, the minority leader suggests that that might create some problems; and, rather than do that, I will proceed, because I am prepared to proceed.

Mr. President, I see that Senator ZORINSKY just entered the Chamber. Does the Senator from Nebraska have certain time allocated to him?

Mr. President, I ask unanimous consent that I may yield the floor without it being considered a violation of the two-speech rule.

Mr. BYRD. Mr. President, on behalf of Mr. LONG, I yield 10 minutes to the distinguished Senator from Nebraska.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that my first remarks not be charged against me.

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

The Senator from Nebraska is recognized for not to exceed 10 minutes.

□ 0910

Mr. ZORINSKY. I thank the Senator from Ohio for his courtesy, and thank you, Mr. President.

Mr. President, on Thursday, the House passed this conference report by a wide margin, but with little enthusiasm. My own feelings as we take this final step in the legislative process are much the same. The package before us has both good and bad features. And I am not sure anyone knows today exactly what the final impact of this legislation will be. But I intend to vote for it because, on balance. I feel it is better than the tax system we have now.

Our current tax system is complex and it impedes economic growth. It creates tax breaks on the basis of political influence instead of economic sense. This bill holds the promise, at least, of some improvement. It promises a tax system that is at once more fair and less complex. Under this bill, many Americans should experience a tax decrease. Those individuals and corporations who have not been paying their fair share of taxes will be forced to do so. No middle income taxpayers from Omaha or Grand Island, NE, should ever again pay more taxes than giant profitable corporations.

I am pleased the conference report includes several provisions that specifically benefit agriculture. Allowing farmers to apply investment tax credits against both future taxes and taxes paid in previous years will cushion the loss of ITC's for this hard-pressed economic group. Likewise, while I am disappointed we were unable to continue income averaging for farmers, I am pleased that at least those participating in the dairy herd buyout program will remain eligible for reduced tax rates under capital gains provisions. Finally, the Conference retained the Senate-passed provision that eliminates taxes on farmers' forgiven debts. This should enable farmers to restructure their debts without incurring the wrath of the tax man.

There are many things I would like to see changed in this bill. For example, I would have preferred some additional moderation of the restrictions on deductibility of individual retirement account contributions. Many other objections I have stem not from the changes, but from the abrupt or retroactive manner in which changes are made. In this vein, I remain extremely concerned about several provisions that will be applied retroactively to business decisions. These changes threaten bankruptcy and foreclosure for real estate firms while they severely damage Government credibility. They set a terrible precedent and will inhibit risk taking and investment. In the area of pensions, we have done a disservice to the Federal work force with the retroactive changes in the taxation of their pensions.

Finally, I am disappointed that, in this tax "reform" bill, we were unable to deny mammoth poultry producers tax breaks that are supposed to be reserved for family farmers. There is something terribly wrong about allowing agribusinesses with hundreds of millions of dollars in annual sales to qualify for "family farm" benefits. While it was not possible to end this inequity in this bill, I serve notice on the Senate that I will not let this issue drop. I will fight vigorously to close what I view as a horrendous tax loophole, if not in the final days of this session, then definitiely early next year.

In closing, let me repeat that I view this bill, despite considerable weaknesses, as better than the tax system that we currently have. The most obvious and overwhelming attraction, of course, is tax rates that at least start low. It is both sad and typical that there is talk of raising these rates, even before they are enacted. I will resist this next year as I have resisted every tax increase since I came to the Senate in 1977—especially while obvious and glaring loopholes remain on the books.

Enacting this legislation only to raise taxes later would negate the single most favorable feature in the bill. And it would leave the American taxpayer with the worst of both worlds. He or she loses many of their deductions and then—once the election is over—their tax rate increases. This would be intolerable and unacceptable.

Still, as the old saw has it, the good should not be the enemy of the perfect. The first step remains to support the lower tax rates in this bill. And the next is to fight off talk of raising taxes next year. That is the course I will follow and I urge my colleagues to do the same.

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

The PRESIDING OFFICER (Mr. SIMPSON). Under the previous order, the Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I rise to indicate my support for the tax bill. I believe that it is a good tax bill. I believe that it is an historic tax bill. As a matter of fact, what could be more appropriate than that we remove 6 million working poor from the tax rolls? I think that is such a major step in the right direction that I cannot toss bouquets to those who were involved in bringing that about more extensively than I do. I just think it was a wonderful act on the part of the tax writers.

And I believe that there are tax cuts of most individuals. As a matter of fact, in all honesty, it is my opinion that there is a major misperception out across America that somehow this bill is going to result in increased taxes for many people. Well, I think it will result in increased taxes for many people and, in my opinion, almost all of those people are the people who should be paying increased taxes; that is those who we must describe as the wealthy, who have not been paying taxes, who have used tax shelters and those who have had corporations who have special advantages and made billions of dollars and wound up receiving billions of dollars in tax refunds, not paying, but getting refunds.

I think the bill is good in that it increases the standard deduction for a married couple to $5,000 and the deduction for single persons to $3,000 and the personal exemption is increased to $2,000. I think that is all as it should be.

I think the purpose of an income tax law, one that has progressive rates, is to try to equalize the tax burden between those who are earning the greatest amount of money and those who are earning a lesser amount of money or very little money and not able to pay taxes.

Now I think it is fair to say that I would have preferred that there be more than the progressive rates that are provided for in this bill. I do not think that they go up high enough for those best able to pay.

□ 0920

But I understand there are many people in the U.S. Congress who would not agree with me. And I recognize that the legislative process is a process of give and take. It is a compromise. So I think the rates that are set forth in this bill, although not exactly what I might have chosen had I had the opportunity to do so, move in the right direction, and I think that overall I would commend the committee for their efforts along that line.

I think one of the most meaningful things that this committee has done is to provide for a corporate minimum tax. Corporations will finally pay a substantial tax on their earnings and not be able to use tax shelters to avoid paying any tax. The 20-percent minimum tax in my opinion is a fair figure. I remember standing on the floor of this Senate, and trying to get through a 15-percent minimum tax. And I recollect very well that some of those over there on the other side of the aisle who had been talking about how unfair the tax law is said they did not know that corporations were not

paying any taxes, and they were much concerned about that. But they did not see fit to vote for the minimum tax, at least not in substantial numbers. So there were only 18 Members of the U.S. Senate who voted for the corporate minimum tax of 15 percent.

It is obvious that 292 Members of the House voted for the corporate minimum tax of 20 percent. And I think we all agree that when this matter finally comes to a vote substantially in excess of a majority of this body will vote for corporate minimum tax of 20 percent.

I think this bill eliminates many loopholes, and abusive tax shelters that have made tax laws scandalous and contributed to economic polarization. I believe that his bill does the right thing in providing a minimum tax of 21 percent on the wealthy. I think that it is right that everybody share in the tax burden of this country. I am not prepared to say whether 21 percent is exactly the right figure or the wrong figure. But suffice it to say that the conferees came to this conclusion. That is the figure they arrived at. And I do not challenge it.

All of this will bring us closer to a society where initiative and creativity will drive and determine economic decisions, not the Tax Code. People will be going into real estate deals, they will be making business investments, they will be conducting their lives in the whole economic world on the basis of whether it is or is not a good business deal. They will not be basing their judgments and their decisions on how to figure putting in $100,000 where they can take off their taxes $500,000, or $400,000, or $600,000.

What an absurdity that we have permitted that to develop in the laws of this country where people were going out and buying tax shelters rather than making investments based upon the economic realities of the project.

So I think that the bill moves in the right direction in that respect. I think it is good for America that it does. So I would say that on balance, the bill is good. It is a good bill. It is not a perfect bill. There are inequities. I do not expect it to be a perfect bill. But I did not expect that which occurred in the conference committee to occur. And that is that there were inequities as the bill left the Senate, and there were inequities as the bill left the House. I did not realize that there would be a host of new items added to the bill that had never been discussed before in the House or the Senate.

This bill as we see it now with its inequities—particularly I am concerned about the fact that it is not fair to employees, Government employees, and public employees who are near retirement. I think the conclusion that the conference committee reached in that respect does not make good sense. I think it is illogical and I think it picks upon a group of people who have been dedicated public servants, and it makes them bear a special burden. And they are not the people who should be bearing the special burden. Those who have been paying those taxes, whether they are corporations or wealthy individuals, certainly should be bearing much of the burden of the cost in this bill in order to equalize it, and in order to make it fair. But calling upon public employees who are going on retirement to pay a substantial portion of the price of this bill I think was a bad decision.

I do not think it is fair to married couples because this bill restores the marriage penalty. The President himself hailed the 1981 elimination of the marriage penalty as being a profamily movement. Of course, it was. Why in the world do we have a provision in the Tax Code that makes it more expensive to live together as a married couple than to live together as an unmarried couple? How absurd can you get? I think that is a very bad provision. I feel confident that that provision as well as the one dealing with public employees will be a subject that will be revisited in the next session of the Congress.

I think it is not fair, and this bill is not fair to many who rely on IRA's to save for retirement years. We had moved in this country to a point where we were urging people to help provide for their own retirement. And we had something called an individual retirement account. And we provided that it was working. Then all of a sudden we are now taking away much of the right, many of the rights and privileges that people had who were creating their own retirement accounts. We have not taken them all away but we have taken away a substantial portion of those rights. I hope we will revisit that subject as well in the coming session.

It is not fair to the elderly taxpayer with substantial ongoing medical expenses because that elderly person will lose some of that deduction.

Mr. President, I want to point out that we have done this to the elderly taxpayers before. We have provided a new level over which they had to get in order to be able to deduct their medical expenses. And we kept raising that level, and raising that level, and raising that level. As I stand here today, I am not sure what that level is at the moment. But I have some vague recollection that at one point they had gotten up to the fact that the elderly taxpayer would have to pay $540 of his or her own medical bills before Medicare would click in. Five hundred forty dollars is a tremendous amount of money to many elderly taxpayers, I say to the overwhelming majority of them, and yet what we do in this bill is we put another additional burden on the elderly taxpayer by causing them to lose some of their deductions.

I believe this bill is very unfair to the unemployed whose benefits will be subject to taxation. Now, come on. How can anybody suggest that unemployed workers who are getting a very, very modest amount of money from the unemployment compensation benefits argue that those benefits should be subject to taxation? They use those dollars and they are not that large an amount, in order to keep bed, board and family together, to hold it together while they are out looking for another job. That was the whole purpose of it in the first instance.

But now what we are saying is those unemployed workers are going to be called upon to pay a substantial portion of those dollars that they receive in taxes.

Finally, I believe this bill is not fair to millions of Americans who want to believe that the political process is not an auction where those with the best lobbyists walk off with the most goods.

□ 0930

I believe that what has transpired in the conference committee will again cause many in America to lose faith in their own Government. That, to me, is a major issue, the fact that a conference committee saw fit to give away billions of dollars, no public hearings, not even the House being permitted to know what was going on, never learning what the new transition rules were all about until after the bill had been passed.

That is just not right.

I have been in this body since 1974, with a short period when I was out, and in all of that period I have never seen a bill which provided for less information being available to the Members prior to their being called upon to vote.

Never has so much been hidden from so many by so few. Or, put another way, never has so much been hidden for so many by so few.

Think of it. The House Members did not know what was in those transition rules. We in the Senate did not know until the day before yesterday at 6 o'clock. Had we tried to find out? Indeed, we did try to find out, by letters, by telephone calls, by urging privately, "Please, let us have the facts."

But, no, we could not get the facts.

We were supposed to get the facts, according to the determination of the U.S. Senate, because we added an amendment that I had offered to the tax bill which was a sense of the Senate on transition rules. That read as follows:

It is vital for the Senate to be fully informed about every matter that comes before it. Therefore, it is the sense of the Senate that the conference report on H.R. 3838 shall contain, one, the name of each

business concern or group receiving a special or unique treatment in the bill; two, the reason for the special or unique treatment; and, three, the cost of the special or unique treatment.

At this point, Mr. President, I would like to inquire of the distinguished manager of the bill, the chairman of the Finance Committee, as to why that provision, which was unanimously adopted by the U.S. Senate, was early on dropped by the conference committee. If he would be willing to respond, I would be grateful.

Mr. PACKWOOD. Is this answer on the time of the Senator from Ohio?

The PRESIDING OFFICER. It is.

Mr. PACKWOOD. We tried to give the transition rules to the Senator from Ohio, and to others who asked about them. As best I could say, I thought the list was about 90 or 95 percent accurate. In some cases we did not have estimates, but we tried to give them to the Senator by cost, and with as much about location as we could. The particular rule that the Senator from Ohio asked about was dropped in the conference at the request of the House, because they did not want that type of a rule in the conference report. We acceded to that request.

Mr. METZENBAUM. I thank the distinguished chairman of the Finance Committee.

Did the Senate make any strong effort to keep it in view of the fact that this body had unanimously indicated that that was its position? I would guess if you asked even as of today they would say it is still its position.

I know the chairman of the Finance Committee, when the bill was on the floor originally, was very cooperative and we were able to get, I believe, a list of 174 transition rules at that time. In this connection, I think that the transition rules were available and could have been provided to us earlier. I would guess that the chairman of the Finance Committee and the staff felt somewhat constrained about releasing them to me and others who were seeking them, frankly because the House did not want them to be released before the bill was voted on in the House.

Mr. PACKWOOD. I might have been able to have gotten them to you 4 to 6 hours earlier in a much less accurate form. There are very few transition rules which blindsided anybody interested in the rules. To put it in perspective, there are $10.6 billion of transition rules in the bill. $7.3 billion of the rules were in the House or the Senate bill before we ever went to conference, so, clearly, everyone interested knew what those rules were. That leaves you with roughly $3.3 billion in new transition rules under the conference agreement. We divided the total amount of the $10.6 billion equally. Since we had used up more than our bill than the House had in theirs, they got roughly $2.3 billion of the remaining $3.3 billion and we got $1 billion. The last of those rules were not agreed to until a week ago Thursday at 3, 4, or 5 o'clock in the morning.

The staff did their level best to draft them, to identify them, to get this bill ready. It had 375 new transition rules in it. By new, I do not mean they were necessarily requested after August 16, but new in the sense that they had not been in either the House or Senate bill. Most of them were requested timely, prior to the August 16 conference action. Many of the requests came in because the Members did not know that they were going to need a rule, since they were not exactly sure how the bill was going to read. There was no point in requesting a rule until they had a reasonable idea whether they needed it.

So the last of the requests on transitions were not decided until about a week ago.

The second rule that we operated on in conference was this: So long as the transitions did not violate certain general principles—no passive losses, although we made one exception for low-income housing, no minimum tax, and four or five other generic rules—the House and Senate said to each other, "You put in what transition rules you want so long as they do not violate the general rules, and you pay for them out of your allocation."

A perfect example of this would be the auto transition rules. We had some auto transitions in our bill, and others were omitted. We treated the companies disparately. We covered some auto transitions and we did not cover some other auto transitions.

So in the conference we dropped out all of the auto transition rules, all of them, which at least resulted in treating all of the companies equally. The House chose to put some, but not all, back in.

They did not violate any of our rules, the passive loss, the minimum tax.

So in some cases, some of these rules for the auto companies are new in the sense that they did not appear initially in either bill. But they were paid for our of the House's portion and did not violate any of the specific rules that we said neither the House nor the Senate shall violate in the transitions.

Mr. METZENBAUM. Would the chairman be good enough to advise how did it come about that there was to be $10.6 billion when the House and Senate previously had agreed upon a total of $7.3 billion, if my recollection is correct.

□ 0940

Then there was an agreement that there would be $3.3 billion more, the House to have the right to determine $2.3 billion and the Senate to have the right to add $1 billion; $3.3 billion is not much money in some quarters, but it is a lot of money in other quarters.

Mr. PACKWOOD. It is a lot of money.

Mr. METZENBAUM. How did the conference decide that it would be $3.3 billion? Why did it get up to $3.3 billion?

Mr. PACKWOOD. Part of it was based upon convenience, part of it based upon what we estimated we would need—an estimate—at the start of writing the transition rules, remember, we had over 1,000 requests in the Senate alone since the bill passed. It is not unlike what the Senator has seen before in other conferences, tax or otherwise. You start the conference and say, all right, we are going to allocate $500 million for a certain purpose, and you fit your conference actions within that. That is the amount of money you allocate ahead of time. We simply decided we would take about $3 billion for new transition requests. It came finally to $3.3 billion.

We allocated the total amount between the House and the Senate, including what was in the bill, on an equal amount. We assumed we needed $3 billion. We found we needed about $300 million more. The equal division was a division we had already agreed upon.

Mr. President, let me add something. The reason we picked the $3 billion—that is the figure we tried to work toward. We knew we were going to have lots of legitimate requests for transitions from people who, until the bill had passed the House and the Senate, did not realize they were going to be left outside either bill. It was only at that stage that they then asked. They had not been included in either bill, did not think they were going to need anything. At that stage, they asked and we knew we were going to have a number of justifiable requests for transitions. We estimated it would take about $3 billion to pay for it.

Mr. METZENBAUM. What concerns me, and I guess if the American people knew about it, they would be concerned, is that that $3.3 billion was a way of parceling out, depending upon how you want to describe it, goodies and I think the chairman might agree that some of them might be so categorized, and in the other sense, correcting some inequities.

I think we would both agree that there are proper transition rules. I said that yesterday and I say it today. On the other hand, if it had been something other than $3.3 billion, you could have used $250 million and preserved the right of farmers to have income averaging. Or you could have used a portion of it to preserve the rights of many to have deductions for

their IRA's. You could have used part of that $3.3 billion—I do not know whether part or all because I do not have the figures in front of me—so senior citizens' rights with respect to the deductibility of their medical expenses might have been covered.

You could have used part or all of that so the rights of married couples would be protected and that they not be penalized by reason of that marriage.

What concerns me, and I recognize the practicalities, it bothers me that this committee gave two men—and I have total respect for both men involved. I think they have done a herculean job and it is not in any way a personal comment to the Senator from Oregon—it could have been any two men. It could have happened that I would be one of them.

I do not think any two men or women in this Congress have the right to parcel out $3.3 billion over and above that which Congress itself has seen fit to include in the legislation and, at the same time, withdraw from the farmers of this country $250 million in benefits they would have by reason of income averaging, a matter we had addressed by action on the floor of the Senate in my amendment. We could have eliminated something and used that money for that purpose.

What I am trying to say is I do not think the managers of the bill have truly made a strong enough case for their having parceled out this $3.3 billion. I guess I would also say and acknowledge that the chairman of the committee was very candid yesterday in saying, and I think to me at another point, that some of those decisions were purely political. I understand that.

Mr. PACKWOOD. If I said that, I should have phrased it this way—I do not mean to back off that statement—part of some of the decisions were political. I did not say that some of them were all political.

There is no point in fooling ourselves or attempting to fool anybody else. We made subjective judgments in some cases. In any case where you make subjective judgments, you make mistakes. Some of the subjective judgment was based on political considerations. I would not attempt to deny that.

Mr. METZENBAUM. I appreciate that and I am not faulting the Senator for it. What I am perhaps putting at issue is, Do we need 3.3 billion political dollars to spread around? In all fairness, the Senator did not say that the whole $3.3 billion was spread around on that basis. He has already indicated that much of it was based upon what he considered meritorious cases.

Mr. PACKWOOD. Let me respond if I can and mention the delegation of powers to the chairman under the transition rules. It was not just transition rules. The conference committee on both the House and Senate side finally said to Chairman ROSTENKOWSKI and myself, "Will you please get together and attempt to draft the bill?" They did not mean the transition rules alone. They meant sales tax deductions, passive losses, general rules. It was an extraordinary responsibility and an extraordinary grant of authority. We tried to do it as honestly as we could. But I do not want to give the impression nor have the impression left that it was an unusual procedure. It was an unusual grant of authority because this was a big bill. But I would wager the Senator from Oregon and other Senators in this body have been members of conferences where the Senate Members never met, the House Members never met, the entire conference report was drafted by the staff and the Members subsequently ratified it. That is a power we granted to those who are paid to work for us. We got together and ratified it. They were minor bills, this was a major bill.

I have seen other major tax bills when I have been a conferee or chairman where, at the end or the process, when we still had 8 to 10 to haggle over, the Members said to the chairman. "Why not go out and see if you can do something with it and bring it back to us." That was on the last 10 to 15 points, although, as the Senator from Ohio is aware, those are often the hardest ones, because you often put off the most difficult ones until the end.

The only difference here is that, as the conference was meeting, any number of days before they finished, they turned to Chairman ROSTENKOWSKI and myself and said, "Why don't the two chairmen get together and see if they can draft the entire bill?" That is what we attempted to do. We took it back to our conferences for ratification. That is how the conference report came to be. Part of the ratification, part of what we drew up was the transition rules.

In the overall scheme of events in an economy that is $4 trillion a year, this is a 5-year bill in which we are going to collect in taxes about $5 trillion over the 5 years. The transition rules total for the 5 years, including what the House and Senate had already agreed upon, about $10 billion. Those transitions that were added after the House and Senate had finished their work on the bill total about $3 billion.

I am just rounding these off. I do not in any way mean to trivialize $3 billion, but when put in the context of collecting about $5 trillion in taxes, it was a relatively minor part of the whole bill.

Mr. METZENBAUM. I thank the chairman. I want to say I heard the chairman make that same point yesterday. He correctly stated that the transition rules represent $10.6 billion out of $5 trillion over a 5-year period. And he does acknowledge that even we in Congress recognize and agree that $10.6 billion is still a whole lot of money. For $3 billion, you could pay for all the foster care needed in the United States for the next decade. For just $100 million out of $10.6 billion, you could provide complete childhood immunization for 2 million infants, toddlers, and preschoolers.

Nobody can convince me that that $100 million could not have been better spent for those 2 million infants, toddlers, and preschoolers than giving it away to some corporations that had some high-powered lobbyists around these Halls the last several weeks. There are giveaways and some of them may be justified, and a lot of them are not justified. For $75 million, $75 million out of $10.6 billion, you could provide food supplements for an additional 160,000 pregnant women and infants under the WIC Program. You can say $10.6 billion is not that much money as against $5 trillion, but $75 million is not much money as against $10.6 billion; $100 million is not much money as against $10.6 billion. But you could do so much good with it.

We spent $4 million already—and had to fight to get it into the bill—in order to provide additional research with respect to orphan drugs, drugs that pharmaceutical companies are not willing to produce, manufacture, do research on because there is not enough value, they cannot make enough profit. And I respect that. But $4 million does that. There are some dollars around here that go an awful long way, if we have them.

So I cannot look at the $10.6 billion and say, "Well, that's not that much money. That's not that much money when you are talking about $5 trillion."

Mr. PACKWOOD. Could I respond just briefly?

Mr. METZENBAUM. This time on the Senator's time.

Mr. PACKWOOD. I will wait.

Mr. METZENBAUM. There are other reasons, I believe, that it is important to discuss the transition rules. I want to say first, in the middle, and any other point during this discussion today, I support the bill, I respect the chairman, I respect the chairman of the House committee, and I respect their achievement.

But having said that, I must take issue with some portions of their activities and their result, because I think that it has produced and created some inequities and some people have benefited that are not entitled to benefit.

I think the worst thing, the worst thing about these transition rules it not rule 26 or rule 43 or any one of the other particular exemptions. That is

not the worst thing. The worst thing is the mystery that has shrouded these transition rules until the House acted and it contines to shroud these transition rules.

I had asked my staff last night when it was indicated to me by the chairman of the committee and one of the Senators on this side of the aisle that the staff was prepared to sit down with my staff in order to go through the transition rules one by one—that is the new ones, not the old ones; we have given our attention to those previously. We did not give our attention to all the House rules but I respect their prerogatives. But I wanted to know what these new 400 rules were all about, and so I asked my staff to spend some time finding the answer. It was about the middle of the evening when that occurred, and my staff tells me that they were able to get through about 40 of the 400.

Now, I think we are entitled to know. Some people may say, "Well, don't worry; Senator PACKWOOD is an honest man. He wouldn't do anything that wasn't right." I hereby stipulate Senator PACKWOOD is an honest man. But having said that, he and I and others as well may have differences as to the proprierty, rightness or wrongness of some of those rules and we have a right to know what they are. How can we determine whether we are for them or against them, how can we talk about them if we do not know what they are? And if you look at the way they are described, they are one-liners and they do not tell you the whole story. They do not tell you the information that was called for in the resolution that was adopted to the tax bill when we passed it, the one that I offered and the one that was immediately dropped in the conference committee.

What concerns me is that when you shroud the legislative process in secrecy you contribute to the views of the average Americans that tax bills hurt average Americans and that only those with clout get taken care of.

If 230 million Americans had the capacity and the ability and the interest and the willingness to study what has transpired in connection with this tax bill, I tell you what they would say. If they knew it fully, they would say, "I appreciate the thrust and the direction of the tax bill, it moves in the right direction, and I think it is going to help me as a middle-class or poor person." But they would also say, "But why do they give away so much money to so many people? How did they decide what to give to this company and that company. Why? They didn't ask me what my problems are. Maybe they should have given me a special tax benefit because I am having difficulty meeting the mortgage payment. I can't pay the payment on my automobile. My employer just cut my wages. And the union went along with it because they had no choice because the employer was going to close down. Maybe we ought to have a special transition rule."

They did not get it. They did not have any lobbyists around here. They did not have anybody at court, and that is what bothers me. What do average Americans think when some get taken care of and so many get left out?

It will help many but many will believe that it will not help them. I believe one of the challenges we face as Members of this body, as Members of the U.S. Congress, one of the most difficult challenges we have is to restore the faith of the American people in their own Government. You have all seen those polls about what people think of Congress—not a very high rating. This adds to that perception. People in this country ought to stand tall and be proud of every Member of Congress and every Member of the U.S. Senate. They ought to be proud of what we are doing in passing this tax bill, but the transition rules, both those at an earlier stage and those that have been put in new, cause the people of this country to lose confidence in their Government and their governmental leaders. That, I believe, is the sad part of the entire issue. Sure, $10.6 billion is either a little money compared to $5 trillion or a lot of money compared to specific expenditures by Government that can help so many. That is not the major issue. The major issue is what do the people of America think about this way of Government?

□ 1000

I think there is nothing more important than trying to restore the faith of the American people in their own Government, in their own governmental leaders. There is nothing more important than openness. We have all talked about the sunshine laws: We have to do business in the sunshine. If we tell the American people what we are doing and why we are doing it, even if we say that we put that particular provision in because we needed to get a majority of members of the Senate Finance Committee to go along with this conference report or there would be no bill, I think the American people would understand that. I think we sometimes do not think that the American people are sophisticated and intelligent enough to understand.

What bothers me is the secretiveness, the failure to disclose. Even as I stand here now, there are 1,800 pages to this conference report that was put on my desk—1,800 pages. It took two volumes in order to print it all. No Member of this body knows what is in those 1,800 pages. It is not possible.

Then, we were handed these two lists of transition rules—one of the old ones and one of the new ones. Here are the old ones. There are 28 pages: RCA Satellite, $1 million; Philadelphia Solid Waste, $13 million; Chester Solid Waste, $22 million; Allegheny Electric Co-op, $10 million.

Do you see anything in here for Mr. James Brown or Mr. George White or Mr. Peter Smith? No. Look at it. It reads like the blue book of American industry.

In some instances, there are smaller companies as well. If you had the right people speaking for you, you would be taken care of.

I am just leafing through it: Mount Vernon Mills, South Carolina, $1 million; Charleston Waterfront, South Carolina, $2 million; Barbara Jordan II Apartments, Rhode Island, $1 million.

I want to make it clear that there are some in here in Ohio as well. I do not think all transition rules are wrong. I think that those in there having to do with my own State, to the best of my knowledge, belong there. But what bothers me is not the fact that any of these are in here. What bothers me is that we do not know what is there, and we do not have enough time to find out. There is nobody in the U.S. Senate who can come on this floor and tell me the answers to each of those. We are entitled to know; the people are entitled to know.

If we fail, the loser is democracy, the loser is our form of government, the finest concept of government that anyone has ever devised and created. It is democracy that suffers, the right of the people to govern themselves.

I think it is necessary that we take the time to turn the transition rules from gobbledygook into plain, old English, and I believe it appropriate that I inquire of the distinguished chairman of the committee with respect to some of the specifics that are in the transition rules. But as I look around the floor of the Senate, I see that there are a number of Members who have come here and wish to be heard on this tax bill.

It is a fact that I indicated that I wanted to be heard at some length, and I wish to inquire of the chairman of the Finance Committee, on my time, in connection with a number of the specific transition rules. Therefore, Mr. President, I am about to yield the floor. But before doing so, will the Chair be good enough to advise the Senator from Ohio how much time he has remaining?

The PRESIDING OFFICER. The Senator from Ohio has used 51 minutes of his allotted 3 hours.

Mr. METZENBAUM. Is it the fact that the Senator from Ohio would not be subject to the two-speech rule, or do I need unanimous consent in order to protect myself in that respect?

The PRESIDING OFFICER. Unanimous consent would be required.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I now be permitted to yield the floor, without my first remarks having been charged against me under the two-speech rule.

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

Who yields time?

Mr. BENTSEN. Mr. President, I yield 10 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, today we cast a final vote on the question of whether there will be tax simplification and reform in this session of Congress.

A good deal has been said on both sides of the question about H.R. 3838, but I think that almost every Member in either House will agree that this is truly a historic moment in Congress. We say that a good many times; I appreciate that fact. But I think that any Member who has been here for a while appreciates the fact that this is landmark legislation.

Mr. President, this truly is a fundamental reform of the entire Internal Revenue Code of this country. As my distinguished friend from Ohio pointed out when he waved the books concerning this bill which are on our desks, this bill constitutes 925 pages, and the explanation of the bill constitutes another 886 pages.

I think most Members would understand that this is not a simple, black or white decision for any of us. Someone in the House the other day said that this is in varying shades of gray.

Some of us have expressed concern about what this legislation might do to the economy. But I would argue that any bill that takes 14 brackets, with a high of 50 percent, and reduces it to 15 percent and 28 percent, reduces the corporate tax rate from 46 percent to 34 percent, and takes 6 million working poor in this country off the tax rolls, ultimately, in my view, has to be of benefit to our economy.

There are some things about this bill I do not like. I was one of those who led the fight in the Senate to retain the deductibility of the sales tax if you itemize on your return. My State of Illinois and many other States in this Union rely upon the sales tax for one of our major sources of revenue. I am sure they take some exception to the fact that we can no longer deduct the sales tax if we itemize.

I was one of the leaders on the floor of the Senate to attempt to retain full deductibility of the individual retirement accounts. While I am pleased that what the conference committee has done has improved the deductibility of the IRA's over what was done in the Senate, I am disappointed that we do not have full deductibility of the IRA's under the conference report before us.

□ 1010

I am very disappointed that more was not done to ease the transition rules with respect to real estate investment. I truly think there has been some change in the rules in the middle of the game with respect to real estate investments.

But on the positive side, I want to make these observations: In the first place, in this conference report the conferees who have crafted this legislation have literally taken $120 billion in tax liability off the backs of individual American citizens. Now, that is an historic step by this conference committee. Again, may I say this conference report takes 6 million working poor folks in America off the tax rolls completely, Mr. President, a monumental task of great significance to ordinary working people in the country.

On the other side as importantly is the fact that we take the wealthy individuals in the country and the major corporations in the country who on many occasions in the past having realized a substantial profit did not pay taxes and we have insured in the future that they will be paying taxes.

Now, I want to answer several charges that have been made against this bill that I think, Mr. President, are not fair. There has been a suggestion by some that this bill was not fair to middle-class, ordinary folks in the country.

My information with respect to this bill is as follows: That for the tax brackets of $10,000 to $20,000, $20,000 to $30,000, and $40,000 to $50,000 for those tax brackets which I will say for Illinois certainly covers from $10,000 to $50,000 what we ordinarily consider to be middle-class folks in Illinois, each of those categories has a substantial amount of tax relief under this conference report.

For people in the $10,000 to $20,000 bracket, as I understand the report, the tax relief will be 22.3 percent, 22.3 percent. Now, that is a significant tax saving for the people in that bracket.

For the people in the $20,000 to $30,000 bracket the tax savings will be 9.8 percent, almost 10 percent. And for the people in the $40,000 to $50,000 bracket, the savings will be 9.1 percent.

So contrary to what has been represented by some of those opposed to this legislation, in the $10,000 to $50,000 bracket among middle-class American citizens, tax relief runs all the way from 9.1 percent to 22.3 percent, and I would argue that that is a very substantial amount of tax relief.

Now let me address the question of the deficit. Some have said that this bill does not adequately deal with the question of the deficit. I believe that every Member here in the Senate is concerned about our budgetary deficit. I would like to say that this Senator has done what he can about that question. I cosponsored Gramm-Rudman-Hollings. I spoke for it. I voted for it. I supported repairing the trigger on Gramm-Rudman-Hollings when the U.S. Supreme Court broke the trigger on the grounds of separation of powers. I have introduced in every session of Congress a constitutional amendment to give the line item in reduction power to the President of the United States. I voted for the line item in reduction veto power. I spoke for the line item in reduction veto power. On two cloture votes in the Senate, one of which fell short by 2 votes, one that fell short by 3 votes, I voted for cloture to get to the question ultimately of the line item in reduction veto power. I have twice voted for a constitutional amendment to balance the budget, Mr. President.

So I think I have demonstrated by my votes in this Congress and in this Senate my concern for the budgetary deficit. But the plain, simple fact is that nobody ever thought that this tax bill was supposed to do anything about the deficit. Every single, solitary person involved in this process, the President of the United States, the Secretary of the Treasury, the distinguished Senator from Oregon, the chairman of the Finance Committee of the Senate, the distinguished Congressman from the city of Chicago, the chairman of the Ways and Means Committee of the House, all said from the very beginning that the idea here was revenue neutrality in connection with this legislation, that there was not going to be any attempt to raise revenue to reduce the budgetary deficit under this legislation.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. DIXON. I thank the President.

So I will say this in my conclusion: There is no black and white in major things of this kind. But in my view so far as the various shades of gray concerning this legislation are concerned, Mr. President, this is at least 60–40 a substantial improvement over the existing Revenue Code, and at the appropriate time this afternoon when we go to the issue, this Senator will vote "aye" in favor of the conference report and I congratulate my conferees who have crafted this important legislation on the work they have done.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I think the distinguished Senator from Illinois has done us a service with a very fine speech addressed to the merits of this bill.

As I have looked at this bill and worked on this bill, I have come to the

conclusion that we certainly have a mixed bag on our hands. Isn't that generally the case when we are talking about a major piece of reform legislation? It is never just as you or I would have written it. It is the give and take of the process. That is the way the democratic form of government works and rightfully so. A major bill like this has some pluses and some minuses. To try to decide how to vote on the bill, you have to sit down and start listing the advantages and the disadvantages, and see what the bill does to the American people.

Then you have a philosophical question—the question of whether the tax system should be used to provide economic incentives. Some economists say we should not put any incentives in the tax system, should not tilt the system in one direction or another.

I do not buy that. I do not believe that. The economists say just go ahead and appropriate the money. Let a Government agency run the program; that is the way to take care of the problem of housing needs, and of all the other problems of society. I just happen to think the private sector is more efficient in addressing the problems and that we ought to pursue private-sector solutions through tax incentives.

Mr. President, this bill gets rid of a lot of those tax incentives.

Why, then, would I vote for this bill? The reason I would is because each of those tax incentives is put in place at a time in our history when it serves what we deem to be a worthwhile purpose for our country, some economic objective we think ought to be achieved. But time passes, economic conditions change, and we never go back and revisit the incentives. To do that would be to take something away from special interest groups. So tax incentives pile on top of tax incentives. Finally, people do not make economic decisions about spending and investing; they make tax decisions. And the country ends up with a very unfair tax system.

I can point out many things in this bill I do not like. The Senator from Illinois mentioned one of them, the retroactivity on the real estate rules. That is not fair. People ought to be able to count on the rules we prescribe. If we are going to change the tax rules, we should change them in a prospective way. It is not fair to structure the Tax Code to induce people to commit major financial investments, and then change the rules in a way that completely changes the economics of the investments.

Another problem with this bill is the way if treats the real estate enterpreneur. It prevents the real estate entreneur—the bona fide developer—from deducting his rental loss against his commission income, his management fees, and his other development income. That is not right. That is not the way it ought to be. We do not treat other entrepreneurs that way. In effect, we're saying that the real estate developer is always engaged in a tax shelter.

I fought this issue in the committee; I fought it in the conference and I lost. And I do not think it is right. If I get an opportunity in the future to change it, I am going to try to change it, so that there is an even playing ground between real estate and other industries.

The problem is, by the time we get the rules changed, a lot of developers are going to be very seriously hurt, if not bankrupted.

Should we close the tax shelters? Of course, we should. I led the fight in the Senate in 1984 in the Finance Committee to try to cut down on real estate depreciation write-offs. I thought I had won it on a Friday. Over the weekend, two of my colleagues changed their votes. I do not know who talked to them about it, but they changed their votes and I lost. And I must say, the real estate lobby was very unhappy with me.

Now I look at a situation where we have dozens of see-through buildings in Houston. And I see them in a lot of other major cities around the country. I think Washington, DC was well on the way to that. The developers here may be saved from their own folly by the changes in this tax bill.

Take a specific example. After we had over 1 million square feet of vacant commercial space in Houston, all of a sudden I saw a new skyscraper coming out of the ground. That building has to be over 50 stories tall; it's not finished yet. My understanding is they got some mogul from the Middle East to contribute some of the money. And then I understand much of the money came from one of the major banks in the country, one of the very largest. One of the senior vice presidents of the bank was in Houston the other day and he was looking at this tall, tall building, not finished, and he said, "Whose turkey is that?" And the fellow who was with him said, "It's your turkey." He said, "You mean my institution did that? He said, "That is right, your institution put the money into that." Millions upon millions of dollars; what an incredible misallocation of resources that could be used for a much more beneficial purpose.

I listened to my friend from Ohio talking about some of the needs of our country. Consider the situation down in Brownsville, TX. They have to come up with the funds to build one new schoolroom every other week because of illegal immigrants coming in. Well, that problem is going to continue to mount. Wouldn't it be a more appropriate allocation of the resources of this country to build schoolrooms in Brownsville instead of see-through skyscrapers in Houston:

This bill is going to stop the misallocation for the future, and that is a major step forward. But, what has happened in this bill is what happens in so many bills. When things get too bad, we often over-correct. And that is what we have done here in making the real estate rules retroactive. They should be prospective, and we should treat the real estate entrepreneur like we treat other entrepreneurs.

Mr. President, I must say that those who say they do not want tax incentives in the system are kidding themselves. We have a tax incentive in the law for home ownership, and I think it is a good one. We ought to preserve that and encourage home ownership to give stability to our Nation. Home ownership creates community interest in whether the streets are being paved and whether the schools are good.

We also ought to have tax incentives for charitable contributions. This bill pressures the basic charitable deduction, and I applaud that. It would be of great concern to me if this bill slashed charitable giving.

I have to say I do have concerns about including gifts of appreciated property in the minimum tax. I have a hunch my friend from Missouri is right in saying that that is going to slow down some contributions. I have a question about that. Yet, it is true that we have seen abuses where people overvalue property and end up not paying tax.

Another tax incentive is for historic restorations. I have supported that. And I think overall it has done some good.

I drive down Pennsylvania Avenue and I look at the Old Post Office Building, and it is magnificent. I really doubt that that project would have been feasible without the tax incentive. That magnificent old building can be a part of our heritage.

Yet, I have noticed another project on Pennsylvania Avenue where only one little corner of the building is old, and the rest of it is new. My hunch is that the restoration credit was claimed on that. And that is abuse. That is what this bill will stop—those kinds of abuses.

Another incentive now in the law is the capital gains differential. I do not like seeing that repealed. I am one who, along with the Senator from Louisiana and many others here in the Senate, fought to bring the capital gains rate down. We wanted mobility of capital where investors would not lock up their asset where they would not be afraid to sell and put the resources to more productive use, because of fear of paying a high tax rate. So we worked to bring the tax rate down from 49.125 to 28, finally to 20,

and here it is jumping back up to 28 again.

Why did I finally go along with this change? I went along with that because of the dramatic reduction in overall rates from 50 to 28 percent, at the top, and to 15 percent for 80 percent of Americans. The low rates mean not only a tax cut for most Americans, but they also mean a better deal for the working people of this country who are trying to get ahead. The person with drive and imagination will now have an incentive to put his or her full efforts into his or her job or business. The Government will take only about one-fourth of the profits—not half. We should not underestimate the incentive power of low rates. That was the big payoff.

I told someone the other day that what finally tilted me all the way to voting for this bill was the great effort to restore some fairness to the tax system. And he turned and said to me, "That is a slender reed to hang your decision on." I do not believe that. I do not think there is a more important reason to be for this very major reform of the tax system than fairness.

□ 1030

Take the fellow who is making $30,000 a year, $40,000 a year, a family of four, working out his tax return on April 15. And he reads about someone making millions and paying no tax. Consider an employee of a company working out his tax return on April 15 who reads about his own company making hundreds of millions of dollars year after year and paying no taxes. He says something is wrong with the system. You know, he is right. That is what we have to change. There is a perception of unfairness in the tax system. It is more than a perception. It is a reality.

Last year I introduced a tough alternative minimum tax for corporations. A number of other Senators have done that. We have put a tough minimum tax in the tax bill. Never again will people be able to point to huge corporations making hundreds of millions of dollars and not paying any taxes. All profitable corporations are going to have to pay their share. So will all wealthy individuals. Is this bill simplification? Yes, major simplification. Approximately 80 percent of returns that will be filed will be the short form. Most taxpayers will not have to pay a fortune to an accountant or a tax lawyer to make out the return.

Unfortunately, I don't think this bill is simplification for the wealthier taxpayer. No. I wish it could have been. I had hoped we could bring that about. But that is not the case. Tax accountants and lawyers will revel in this. They will probably raise their fees if they can go higher than they already are. And out there is that vast army of tax lawyers and accountants, they are working very hard to find new loopholes. And as hard as we have worked on this bill, as much as the chairman has devoted his time to trying to stop those things, as have others on the committee and the staff, next year we will find that the lawyers and accountants have been successful in trying to do some things to try to protect themselves.

I heard one of my friends in the Senate say that the politically smart vote was to vote against this bill. You know, I think he is right. And the reason I think he is right is because the people that are on the losing side in this, and the people who lost their shelters are sure going to know about it. And you have an incredible number of PAC's in this country that are going to be telling them about it. And they are going to be telling them next year, and they are going to be relying on them again in 1988.

How about people that are on the winning side? How about the 6 million working poor? How about low-income people? How about middle-income people who have a substantial percentage tax savings in this? Will you hear from them? Will they know about it? Those are the folks that do not have PAC's. There is no trade organization in Washington sending out a letter right now to each and every one of the working poor that will be taken off the tax rolls, to the low-income people, or to the middle-income people. They are not represented here. The good-news letter will not be sent. The benefits are so diffuse over them that they will not stand out high profile. The fact that a middle-income family might have saved $400 or $500 a year in taxes will really not be driven home to them.

I assure you by election time they will probably have forgotten. But I promise you the PAC's are going to remind those who voted for this bill and they are going to inform their constituency of who voted for it, and remind them of the negative effect the bill had on them because they lost their favorite loophole.

But I believe in this bill that the special interests have been subordinated to the public interest. This is a bill that they said could not be done; that there was no way you could overcome the influence, the contributions, the PAC letters, the organized groups, and bring about this kind of a massive reform of the tax system. But it has happened.

And I think it is a step forward. How is it going to affect the economy? I am not sure. That does concern me. As I listen to the economists, I hear some very erudite, men and women, learned, arguing both sides of that question. Will we be back to visit this bill? Sure we will. Will there be a technical amendments bill next year? Yes. If we see a negative impact on the economy, we will try to do something about it. Repealing the investment tax credit is a risk. Capital investments are down. One of the things that concerns us most is the trade deficit and our failure to modernize the productive capacity of this country so we can compete. There is a risk that the repeal of the ITC will worsen this situation.

I heard the chairman of the House Ways and Means Committee say he does not want to revisit this bill next year. We were over there in the Ways and Means Committee room and he said "I want to put a sign on the doors that says, 'Gone fishing.'" I said to the distinguished chairman, "Don't rent out this room next year. I have a hunch we are going to be back."

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

Mr. BENTSEN. Yes.

Mr. LONG. Mr. President, I could not agree with the distinguished and able Senator from Texas more. He and I know there are a lot of things in this bill that will change. I am for this bill. I think it is a good bill for the country on balance. And, yet, I agree with the Senator from Texas that there are a lot of things in the bill that should be changed. This is a dynamic country.

This country does not stand still. There are things about this bill that will need to be corrected, and the sooner we get to it the better. There will be a bill next year, to correct technical mistakes made in the bill. We know there are mistakes. There always are.

Mr. BENTSEN. I understand there are going to be some of the Senators, I suppose, who will be trying to rewrite the history of this bill down the line; they'll be trying to rewrite their position.

□ 1040

But although some of us may try to rewrite history after this bill is over, overall the facts are that I think it is a bill that is worthy of our support. It is not cosmetic. It helps restore fairness to the system. It says to middle income, "We are going to give you a tax cut."

This bill also says to the working poor, "We are going to give you an additional reason to stay off welfare and go to work because if you are below the poverty line, we are going to take you off the income tax rolls. You are going to pay the payroll taxes; you are going to continue to pay your sales tax. But we are going to give you an additional incentive to have a productive job and get yourself back up to a position where you get back on the income tax rolls."

So those are the positive and affirmative things of this monumental piece of legislation which will pass through

this body. I hope my colleagues will support it.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, I yield 10 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, I thank the distinguished chairman of the Finance Committee for yielding. Let me begin my discussion of this bill by congratulating the people who wrote it.

Bills like this do not just happen. They happen because of leadership. I remember when we started this term and the objective was a tax reform bill. I looked at the progress that was being made, or the lack thereof, and I wondered whether or not, with all the separate, competing interests that together make up the public interest, if we would ever get a bill written that could be adopted.

I remember that period where we had a collage of all these compromises and things ground to a halt. Then, Chairman PACKWOOD went back to basics. He set out the basic principles we would try to achieve in tax reform and what the end product might look like and started again.

I think it was out of that brilliant decision that we have come to this point. We have an opportunity today to adopt a tax reform bill that will change the Nation and will improve the efficiency with which we invest our resources in this country. I think this bill is more of a testament to one person than anybody else. That is BOB PACKWOOD.

In my 2 years in the Senate everything good that has happened here, at least in terms of my own perspective of what is important, BOB PACKWOOD has had something to do with and has been a key leader. I think this tax bill is another example.

I think his work with RUSSELL LONG and with my senior Senator, LLOYD BENTSEN, helped produce this product today.

I have heard over the last day of debate a lot of people get up and criticize this bill. If you set out to find problems with it, no doubt they are there. In trying to move to lower rates, one has to truncate the transition from the old Tax Code to the new Tax Code. We all know that the fair way to do that would be to simply set out a day and say, "Every deal entered into before that day will come under the old tax system and every one after that day will come under the new tax system."

The problem in doing that, as the committee found, for obvious reasons, is that unless you truncate the transition process you cannot lower the rates and thereby provide the incentives for Congress to act.

It is obviously unfair to transition out of the old system in 3 years and change the rules of the game on people who made investments in good faith. No matter how inefficient those investments might have been from the point of view of the economy, they were efficient from the point of view of the individual taxpayer.

Each of us can obviously look at the transition rules and the individual items in the bill. If anybody ever told me that I was going to vote for a bill that was going to allow the University of Texas to treat football tickets differently than Texas A&M, I would never have believed them.

But I am here supporting this bill and doing it vigorously not because it is a perfect bill—there is a lot in this bill that I do not like—but I am supporting this bill because it is the first legitimate effort in 50 years to make the tax system more efficient and fairer—fairer in the sense that we close loopholes, eliminate preferential tax incentives, and in doing so assure that everybody pays their fair share.

Mr. President, in the postwar period we have had confiscatory marginal tax rates and the economy has underperformed. We have not had sufficient investment to meet the objectives that we set out for ourselves as a free society. When the private sector did not respond under confiscatory marginal tax rates, we set out to provide special incentives for investments, ranging from investment tax credit to special tax treatment for certain kinds of investments. But the net result was to provide incentives to invest, in some cases intentionally and in some cases unintentionally primarily in areas singled out for political reasons, not singled out for economic reasons.

As a result, we have had for 40 year in this country incentives to invest to avoid taxation rather than to invest economically to create more growth and jobs.

We have all seen numerous instances in our own little hometowns, our own experiences, of a misallocation of resources. I would like to refer to a problem in my hometown on Highway 6, at Market Road 60. We had a Ramada Inn there which changed hands because basically we have a big demand on football weekends an not so much at other times. Then we had an Economy Motel built on another corner. It had not been a big moneymaker. Maybe the bank would take it back but they did not know what to do with it.

You would think with these two motels the last thing on Earth that would happen would be a new one being built right between the two.

This is no Aggie joke.

Right between the two we now have a new Economy Motel.

Only one thing can explain that kind of behavior: Govenment. Only Government could product a policy that would generate that absurd result. That is what the American tax policy, which has existed for the last 40 years, has done. It has provided incentive to invest to avoid taxation instead of incentive to invest to create jobs and economic growth and real return for the investor and for the Nation as a whole.

What this bill does, and what makes it revolutionary, is that it moves away from trying to allocate capital on the basis of Government-provided incentives. It closes off those tax preferences and uses the resources generated to lower marginal rates, so that now on a broad basis there is incentive to invest where economic return exists.

Until we see how people respond to this new system, it will be difficult to predict what the exact revenue flows generated by this bill will be.

But I think the long-run impact is clearly going to be positive. The fact that you can keep 72 cents out of every dollar you make, no matter where you generate that income, combined with the fact that in corporate earnings you are going to pay a maximum of 34 percent, together will be a tremendous stimulate to efficient investment aimed at creating jobs and economic growth.

There is a lot of debate about the impact of the various tax credits and tax loopholes, depending upon your perspective, that we are eliminating. Quite frankly, Mr. President, I think most of those things do not make any difference. Under the current system you can pay up to 49 cents on the dollar, at the higher income levels, to avoid taxation and be better off.

We all read these headlines about people not paying their fair share of taxes. Normally, what is not run in the story is that they pay tremendous amounts of money to avoid taxation by investing at lower rates of return, tying up their money and operating inefficiently from an economic point of view.

That was a deadweight loss to society.

Now we have eliminated that circumstance and nobody is going to pay more than 27 cents out of a dollar to avoid taxation.

□ 1050

As a result, taxpayers will move more of their income into ordinary income, and we are going to have investment made to create jobs and growth. So, Mr. President, I think we have an opportunity to adopt a tax bill that despite all its problems, despite that if creates, as any package of this nature will, its own new inequities, is on balance a very strong and postive move.

People say this is going to kill Gramm-Rudman. I do not see it. I am not positive what the net revenue impact is going to be next year, but I cannot help believing that creating in-

centives for growth to create new opportunities for our people can only help us in balancing the Federal budget.

If we lose revenues, then we shall have to come back and figure out what we are going to do about it in terms of savings or in terms of replacing those revenues. But when you get down to the bottom line on this vote today, this vote is on a piece of legislation that is a substantial change in tax policy. This bill is the first legitimate effort we have had in this country in the postwar period to make the tax system more efficient in the allocation of the Nation's resources and to make it fairer to the people who do the work and pay the taxes and pull the wagon and make this country work.

Mr. BENTSEN. Mr. President, I congratulate my distinguished colleague. He has a fine record as an economist and has spent many years of his life dedicated to better understanding that very difficult science. I think his statement has been most productive and helpful to us.

Mr. LONG. Mr. President, will the Senator yield on my time?

Mr. GRAMM. I am happy to yield.

Mr. LONG. Mr. President, the Senator touches on a point that I would like to discuss with him for a moment. I think it is inherent in government that we cannot do something without overdoing it. You do not need to go far to see that, in an effort to help people, we often spent a lot of money to bring about the wrong results.

We ought to spend money in ways that will encourage people to do what is best for them and for society.

In this bill, we repeal the investment tax credit.

While in the Senate I have voted three times to put the investment tax credit in place. This will be my third vote to repeal it. In two cases, the same President who asked me to vote to repeal it asked me to reinstate it.

During the periods we have had an investment tax credit, it has done a lot of good. It provides a stimulus to help develop needed investment in plant and machinery. However, at times it went too far and overheated the economy. Thus, we have repealed it twice already. This will be the third time.

Yet if one wants to get the economy moving, I have yet to see a more effective way than the investment tax credit. Time will tell whether we should repeal it forever or not.

It is important to keep it mind that we are simply unable to guarantee that we will stimulate the kind of activity we want to stimulate without doing more. Invariably, if we think something is good, we want to do more of it and we sometimes do too much.

We also have a perception problem. In the past, when we gave a tax subsidy, we made it difficulty favorable that one could avoid paying any tax at all. We know better than that now. We know that the subsidy should not be so large that one could avoid paying income tax completely.

In my judgment, no one here is smart enough to write a tax bill that we will want to apply for all time. But we know that this bill will be a major improvement for now. I believe that, as time goes by, it will be made a better bill. We should have a stimulus to encourage people to do things we think are good for the country. However, we need to learn how to better control it so it is not overdone.

Mr. GRAMM. Mr. President, if I may respond to the distinguished Senator in what I have left of my 2 minutes, I want to say I think the most effective stimulus is the one being provided by this bill. That is a low marginal rate. I think at various times, we have benefited from things like the investment tax credit, but those invariably have been put into place for political reasons to respond to problems that were here today and might be gone tomorrow and often, they misallocate resources even as they create jobs in the process.

I think the beauty of this bill is that by having a low marginal rate, the incentive will be to choose investments on the basis of their economic productivity. So whether this will cause a short-run boost in the economy, I think quite frankly with the problems of the real estate industry it might not, but in the long run it will help.

Mr. LONG. Mr. President, only time will tell whether we are wise to repeal the investment tax credit, or whether it will remain repealed.

I thank the Senator.

Mr. PACKWOOD. Mr. President, I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 10 minutes.

Mr. WILSON. Mr. President, one of the great fringe benefits of service in this body is the opportunity to learn. I think those who were privileged to be here during the recent exchange between Senator LONG and Senator GRAMM had that opportunity. There is a great deal of distilled wisdom in the observations made by the ranking member and former chairman of the Committee on Finance. And I would have to say that as I listened to Senator GRAMM, he needs to be admonished that if he is not careful, he may give economists a good name.

Mr. President, as have my colleagues, I have spent a very long time considering the need for tax reform, the various legislative proposals that were made to accomplish, to varying degrees, real reform, and the bill that is now before us.

As part of my consideration, I spoke to businessmen and women in my State of California about the pluses and minuses of the different proposals—what effect the proposals would have on their ability to invest and the ability of their customers to buy.

I spoke to people about the proposed changes to the taxation of individuals—what effect the proposals would have on their ability to save, to buy necessities, to purchase a home, and to feed, clothe, and educate their children.

I spoke with economists about the proposed changes—what effect the proposed bills would have on investment, our GNP, our ability to produce domestically and compete internationally.

Mr. President, not long ago, in a mood of near euphoria, we sent to conference the Senate's version of tax reform. What has come back from conference is a report that is not nearly as good as the Senate tax reform bill but, nonetheless, a bill worthy of our support—despite many serious defects.

More to the point, it is not amendable. Therefore, there are two relevant questions that should be facing Members of this body as we contemplate which way to vote on this important legislation.

The first question is this: Is the bill before us an improvement upon the current code?

□ 1100

Second, is it a better place, as Senator LONG has admonished, from which to start on further reform than is the current code? The answer to both of these questions, Mr. President, notwithstanding whatever defects and unfairness may exist in this legislation, is yes. The answer to both questions is yes, which is how it comes to pass that the chairman of the Finance Committee, Senator PACKWOOD, and the other supporters of this legislation now defend a whole which contains parts and elements which they did not like and which they resisted, unsuccessfully, in the conference. But the answer to both of these critical questions is "yes," not because this mixed bag contains, on balance, more good than bad, but because it is better than what we have, significantly better; and perhaps even more importantly, because it offers us a better place from which to continue the well begun but unfinished business of tax reform.

It is no secret, Mr. President, that next year we will be facing more than simply a "technical corrections bill prompted by this year's tax reform" effort. Because this bill would sweep away virtually all of the tax shelters that have crept into our system, or at least very many of them, and because it would streamline our Tax Code both on the corporate and individual sides, there are not very many significant places left to trim as a means of either

recovering revenues by canceling "tax expenditures" or of revenue-neutral creation of new preferences "tax expenditures." There are no more $23 billion motherlodes to tap. If we are to raise money by adjusting our income taxes either to create a tax preference or for any other purpose, it will have to be done headon by raising rates. That will not be easy, nor should it be. That simple fact alone may constitute the best protection against easy income tax increases or the kind of backsliding that could bring an insidious return of shelter creep to the Tax Code.

Yesterday, Mr. President, I listened to one of the best speeches I have heard on the Senate floor in the time I have been in the Senate. The distinguished Senator from Missouri [Mr. DANFORTH], with eloquence exceeding even his norm, delivered a very thoughtful analysis with very clear conviction, in which he raised a number of cogent arguments for opposing this legislation. So good was his speech that I think it could serve us very well as a matrix against which to test this legislation. He spoke of unfairness and cited many instances of it. I quite agree with him that fairness is the fundamental test of any tax legislation, and I do not dispute any of the examples of unfairness that he brought forward.

Indeed, I do not expect that the chairman or many of this bill's supporters do. Obviously, there were enough conferees who hold a brief for some of those unfair results—because they are in the bill. Indeed, I could add some examples of my own. Perhaps the best example is the issue of the individual retirement accounts which occupied much of my own time and energy on this floor. We came close, but lost on that measure. More regrettable, the public lost. It seems to me more than legitimate for those who are seeking to put something aside to supplement their retirement income to do so with encouragement from the Tax Code. This is a national interest. It is also clear that IRA's have provided a significant source of new savings for new investment to create new jobs.

But for all its unfairness, whatever those instances may be, this bill on balance produces much greater fairness than the current code. The current code taxes both individual and corporate taxpayers at widely differing effective tax rates, and that is not at all fair. These differing effective tax rates, Mr. President, exist because some taxpayers are heavily sheltered; that is to say, because of the preferences in the current code, which this bill will eliminate. The minimum tax provisions which prevent all taxpayers—individual or business—from escaping the payment of any tax, as so many have and can under current code shelters, is a major breakthrough in fairness.

This bill is legitimately entitled to be called reform in contrast to the five previous efforts—which in general simply sought to swap one set of tax preferences for another. It is entitled to be called reform for two reasons—because it has eliminated those shelters and required that all citizens pay at least some minimum tax, and because it has brought about a dramatic reduction in rates which by itself constitutes an enormous increase in fairness to the vast majority of taxpayers.

And here, Mr. President, not at all parenthetically, let us give full credit, as did Senator GRAMM where it is due. Many have spoken over the years of the need to do what now has been done by one man's energy and determination. I commend him and I give full credit to BOB PACKWOOD. One man finally made it happen.

This bill provides dramatic rate reductions while retaining important deductions: That for home mortgage interest; that for State and local income and property taxes; that for charitable contributions, though not, unfortunately, including gifts of appreciated property.

Senator DANFORTH was concerned as well about the economic impact that this legislation will have. I suspect that in the near term he is right; it may well have a dampening effect. The tightening of depreciation, the loss of the investment tax credit, will produce, with other changes, a shift of $120 billion to business from individual taxpayers over the next 5 years. It will affect the cash-flow of businesses. In the heavy industries, in particular, it will probably cancel sales, cancel purchases, which will have implications even for high technology. For example, General Motors is a major purchaser of semiconductors.

But, Mr. President, our economic growth will be far more affected by the success or failure of deficit reduction and by monetary policy, which fact enjoins upon the Governors of the Federal Reserve Board the caution to be adequately expansionary in setting monetary policy in the future.

In the long term, Mr. President, the economic impact of this bill I think inevitably will be a healthier investment climate because reduced borrowing will result from the lessened incentive of reduced rates against which to offset interest deductions. Economic growth will be financed more by equity in the future than by indebtedness, and that is healthier.

This bill will produce a healthier investment climate and greater real economic growth because of the elimination of shelters which have been distorting the marketplace. Let the marketplace govern investment decisions, unfettered by the kinds of distortions that have become the reality over half a century of incremental growth in the Tax Code. The growth in shelters has pushed investors to seek so-called profitable tax losses. It has created a traffic in those losses. That incremental growth in shelters has made our tax system a very inefficient allocator of resources.

Low rates and the loss of shelters, by contrast will encourage investment for real return and remove the incentive for investment in nonproductive assets that contribute no real growth to our economy.

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

Mr. WILSON. Mr. President, I ask for 3 additional minutes.

Mr. PACKWOOD. Mr. President, let me say this. We have only 48 minutes left on our side. The other side has about 4 hours. If the Senator from California could wrap up in 2 minutes, then I am going to ask the rest of our speakers to hold themselves to the times allocated or the rest of our fellows will not get any time at all. Two minutes.

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mr. WILSON. I thank the Chair and the distinguished manager.

Mr. President, deficit reduction was the final concern that I share with Senator DANFORTH. I agree emphatically that deficit reduction is a far more urgent priority even than tax reform. I told the President so at the beginning of his tax reform effort.

What will the impact of this tax bill be on revenues? This coming year it produces a surplus. In the next 2 years it will produce a shortfall in revenues. Only over 5 years does it promise to be revenue-neutral.

But, Mr. President, the brightest note I entertain is that as tax reform in future years encourages investment for real return and discourages heavy borrowing and indebtedness, it will compound its therapeutic effect as an efficient allocator of resources in that it will produce a long overdue drop in real interest rates that have been kept too high by an artificially high and arguably unhealthy level of borrowing and indebtedness. In fact, I think we wil continue to attract foreign capital to create American jobs, but it will take the form of equity rather than debt.

□ 1110

Mr. President, this bill in most instances—though certainly not all—is better than what we have. It is a better place from which to continue real tax reform. If unfinished, this effort at tax reform is well begun.

Let me say that transition rules are not the reason to vote for this bill. Anyone who thinks that, frankly, is a fool. Anyone who seeks a transition

rule would be better off seeking to defeat the bill to avoid the change necessitating transition rule relief. No, that is not the reason to support the bill. It should be supported because it is in itself a marked improvement upon existing law, which I think will have greatly beneficial economic impact, and because it provides a framework, for further reform preferable to the present unfair tax structure of too high rates which are inconsistently relieved by a jumble of shelters of widely varying purpose and merit.

I thank the distinguished manager, and I yield the floor.

Mr. PACKWOOD. Mr. President, I am most grateful for the kind comments of the Senator from California and the Senator from Texas [Mr. GRAMM] about my leadership.

This bill, however, did not just spring full-blown out of the Finance Committee secretly. There were many people responsible for it many months and years before. There were Senator BRADLEY and Representative GEPHARDT. Senator KASTEN and Representative KEMP were responsible for a bill that proposed very low rates.

I yield 5 minutes to the Senator from Wisconsin.

Mr. KASTEN. I thank the chairman of the Finance Committee for his kind comments.

Mr. President, the Senate will shortly enact historic legislation to reform the Nation's Tax Code. I applaud that effort.

The tax bill we are about to adopt is historic for several reasons.

First, it will reduce tax rates for the working men and women of the Nation. Just a few years ago, the top personal tax rate was 70 percent. When this bill goes into effect, the top personal rate will drop to 28 percent.

That means that more money will be left in the pockets of American taxpayers.

More assets will be available to make new investments in our economy. Jobs will be created and American made products will become more competitive overseas.

Second, this legislation is profamily. The most essential provisions of the Tax Code for working families are retained and strengthened.

The personal deduction is increased, as is the standard deduction. Furthermore, the most important provision in the Code to encourage home ownership, the mortgage interest deduction, is retained.

In addition, families will be able to continue to borrow against the equity in their home to pay for the education of their children.

This legislation goes even further to assist the poorest families. Over 6 million of our Nation's poor will be given a boost up the economic ladder by being taken off of the tax rolls altogether.

Third, this legislation will return our Tax Code to the fundamental principle of fairness. Individuals making the same amount of money will now pay the same amount of taxes. Special interests will no longer be able to shelter their income and avoid paying taxes.

Included in this legislation is a stiff minimum tax provision. Corporations will no longer be able to dodge paying their fair share of taxes.

Most important of all, this bill takes a major step toward getting Government out of the business decision equation. The tax impact—business to business to business—will be equalized.

As an example of this, look at one of the most important industries in my home State of Wisconsin—agriculture. The current Tax Code encourages large corporate-style farms to make capital investments such as milking parlors, hog confinement operations, and expensive farm machinery, in a number of ways.

The deduction now permitted for passive losses, the current Tax Code also encloses wealthy nonfarm investors to farm the Tax Code, by sheltering money in cattle, hog, and dairy operations.

I believe that we need to encourage capital investment in most areas of the economy. But agriculture has surplus productive capacity now. More capital investment means more production and lower prices for the family dairy farmers of Wisconsin and for family farmers across the country.

Three years ago, there was little talk in this town about real tax reform. When Congressman KEMP and I introduced the "Fair And Simple Tax" bill [FAST], tax reform was not on the inside track. Senator BRADLEY and Congressman GEPHARDT were also early leaders in the effort to reform our Tax Code, as the chairman of the Finance Committee just said.

Then the President and the Secretary of the Treasury weighed in in favor of tax reform. That began to give the issue real momentum. But the credit also belongs to the chairman of the Finance Committee, Senator PACKWOOD, for the work he did in taking this group of ideas and differing opinions and putting them all together. So it is PACKWOOD along with Chairman ROSTENKOWSKI who deserve the credit for bringing these packages together. Ideas have consequences. And I believe this tax bill is an example of the test of that.

This tax bill is yet the latest battle in the supply side revolution. What once was an economic theory followed by a relative few has now become mainstream: it is now embraced on a bipartisan basis.

Experience has shown us again and again that by reducing tax rates, the economy is stimulated and our Nation's economic health is improved.

In 1978, when the capital gains rate was 49 percent, revenues were $9.3 billion. When we cut those rates to 28 percent in 1979, the economy responded with healthy growth in that sector, so much so that revenues increased to $11.6 billion, even though the rate went down. Most recently, when the capital gains top rate was cut to 20 percent in 1981, the economy took off. Revenues from this unleashed sector doubled within 3 years.

It is clear, by lowering tax rates we remove the deterrents to the working people of the Nation to work harder, increase investments, increase savings, and create new jobs.

This legislation returns to the principle that individuals should be rewarded for doing a good job. Economic successes will no longer be penalized by being pushed into higher and higher tax brackets.

Instead, those individuals will be encouraged to reinvest their earnings, and savings will increase. This will further stimulate the Nation's economy.

The Nation will be better off under this new code than the one now in place. Low marginal rates and the key.

The efforts of America's working men and women will no longer be penalized by our Tax Code. People will be better off with lower rates than they are today, and America will be better off, too.

I support the conference report and urge the Senate to quickly adopt it.

The PRESIDING OFFICER. The Senator from Montana [Mr. MELCHER].

Mr. MELCHER. Mr. President, while driving in this morning to come to the Capitol, I listened to National Public Radio. One of the newscasters, quoting the distinguished chairman of the Senate Finance Committee, Senator PACKWOOD, spoke in relationship to the economic conditions that might result if the bill becomes law. She quoted him as saying, "Well, no guts, no glory."

Referring to the 97-to-3 vote that occurred a few weeks ago when the bill passed the Senate, I am certain that the distinguished chairman did not mean that the 97 who voted for the bill had guts and the 3 of us who voted against it did not have guts.

As a matter of fact, what existed at that particular time was a euphoria in the media and the public attitude throughout the country that we had discovered a very amazing way to reducing people's taxes.

Well, it is not the media that really analyze a tax bill. It is not editorial writers and newspaper writers who analyze a tax bill. Accountants, CPA's, economists, and the three of us who voted "no"—Senator LEVIN, Senator

SIMON, and myself—said it was a bad bill.

□ 1120

Now, we have it before us in its final form right here, these two volumes, and these two volumes cannot be amended. We just vote up or down on these. We cannot possibly amend these two volumes.

But at the desk is a third part, the third part of this whole package. It is called House Concurrent Resolution 395 and that is part of it. It is meant to be part of these two volumes. It fits in and completes these two volumes. There must be a couple thousand pages of this. There are 75 or 77 pages of House Concurrent Resolution 395, the third part. We will get to that later on after we dispose of this which cannot be amended.

Strangely enough, we could pass this and never pass the third part. I do not know exactly what that does to us. I do know what passing the third part means to all this. But it is different, this House Concurrent Resolution 395 at the desk. It is different. It can be amended. It is open to amendment.

And all of this needs amendment, very seriously needs amendment.

Let us make a judgment on this part, the part that is before us and that cannot be amended.

What do taxpayers think of it or what will they think of it when it does become law?

There are two basic methods for taxpayers to judge tax bills. The first is will I pay more or less taxes after it becomes law? That is basic.

Then the second basic method by which the average taxpayer judges whether a tax bill is good or bad is, is it good tax policy for the business or the industry with which I am involved, that I depend upon for my livelihood, for my job, or for making a living if I am in small business or I am in farming or ranching or whatever?

Does it not occur to all of us that is the way it boils down, whether the taxpayers, the public at large consider a tax bill good or bad? I think it does.

Let us see on the first question, "Is this a good tax bill for me as a taxpayer?"

Well, let me talk the way I guess any of the 100 of us would have to answer that question candidly and honestly. Yes, I think for myself and my colleagues and my wife and my colleagues' wives, that, yes, we will get a tax cut; maybe it will be about $2,000. That is not bad, is it? So I ought to love this bill. I ought to be voting for it on that criteria.

I do not love this bill. I think it is a bad bill and I am against it. Why would I be against it?

We get a tax cut, but two out of five of our childen will get an increase in taxes of about $200 per year. We get a $2,000 tax cut, but my staff and your staffs and all my colleagues' staffs, about one-third of them, are going to pay more taxes, maybe $200 a year more. That ought to be a wash, should it not, get 10 of our staffs to pay about $200 more and we get about a $2,000 tax cut. That ought to be a wash.

I believe that those with lower income need a tax cut more than I do. So that is one reason I oppose this bill.

On the second point, does this tax bill help the industry or business on whom our livelihoods depend?

On all analyses this bill is bad for basic industry. When you weigh one against the other, one provision against the other, as you must when you analyze the tax bill, this bill is bad for agriculture, for forest products, for mining, for anything, those are basic industries, the most basic of our country, and those are the industries we have in my own State of Montana. We are really basic out there. But we are not so unique. Ours are basic industries. We get our production out of the earth. That is pretty basic for the United States, pretty basic for the world. And this bill is bad for those industries in wiping out capital gains and wiping out income averaging that farmers and ranchers need very badly, with the high swings in their income because of the vagaries of nature, the difference between one year and another with production. This bill wipes out the investment tax credit.

So, I oppose the bill on the second point and I oppose it with all my strength. The economy of this country is built on these basic industries. These industries are struggling now. Some of the individual operators are already broke. They are gone. Many more of them are dying off, going out of business.

For those who are left in these basic industries, this bill obviously makes that recovery back to a profit level more difficult.

These people do not need a crystal ball nor an economic model to know they do not need this tax bill, and they cannot stand it, because many of them cannot survive under this bill. They do not need a crystal ball to see that. They do not need an economic model to run it through large computers to see what it will do to them. They know.

But those who do use the economic models and run it through these huge computers to see what the outcome of it would be over the period of the next 5 years, Chase, Wharton and Data Resources, they all reach the same conclusion: Less investment, less growth, continued high unemployment, and more deficit.

That is not the kind of recipe that we need for the economy of this country during the next 5 years. The economy is shakey enough. We have no need to add to the self-inflicted wounds causing more economic damage to ourselves. So I oppose the bill on that ground.

But there are more reasons to fight the passage of this bill. It is double taxation on retirees who are State, Federal, and local retirees who have contributed into their own retirement funds. They put a nest egg, mind you, each month aside for their retirement and before they put that nest egg aside for their retirement out of their pay they have paid the taxes to the U.S. Government. They have paid their income taxes on that.

But this bill will require them to pay those taxes again when they do retire drawing from their nest eggs that have accumulated for their retirement funds. That is double taxation. That is paying taxes twice and why would we put this tax burden on retirement funds? Why would we do that? Why would we be so mean to retirees, clobber them, clobber our most vulnerable group, retirees who have worked all their lives, who have worked hard on fixed income and just paid in those nest eggs so they could retire with some degree of comfort?

Believe me, this is the first time to my knowledge that we have ever enacted into law this type of taxation on savings for retirees. It is totally unfair. In fact, it is abominable and I will vote against the bill.

But this bill does not stop there in terrible taxation. It has retroactive taxation. In a number of areas, taxes will be collected on past transactions done legally and in good faith according to the law, but this bill retroactively in a number of areas is going to make those transactions subject to tax. In other words, it removes the tax deduction.

□ 1130

When investment was made on one basis legally and in good faith, now to change the bill and make it subject to tax is totally unwise.

What are some of these areas? Well, I just mentioned one. Even the double taxation on retirees is retroactive back to a date this summer, about July 1.

But on investment tax credit, instead of being a tax credit it becomes subject to tax, retroactively, limited partnerships; retirement taxes, as I have already described.

There are a number of areas. It is very difficult—in fact, no one should describe this bill as fair. It should not be described as fair. It is unfair.

For what reason, I ask, should we pass legislation devising newer and greater unfairness in our Tax Code? That is not reform. Personal savings are discouraged by eliminating millions of Americans from IRA's, individual retirement accounts.

Let me get to another point. I grew up learning the philosophy, and I believe in it, that if you were lucky and

made more money, you could afford to pay more taxes than when you had earned less, a progressive income tax. I grew up believing in the wiseness of that, and I still believe that it is prudent and a good philosophy because it is good for people and good for the country, especially good for the economy of this land of ours. And this bill virtually ends that concept, that philosophy of the progressive income tax.

And then the bill goes in another direction that seems to me to be totally unwise. It is going to make it harder to be charitable. It makes it harder to donate to our churches, our charitable organization, our colleges, universities, hospitals, research centers, and humane organizations, whether for people or for animals.

This bill discourages charitable donations to these very fine organizations and institutions. For those who want to get it, they are going to have to itemize to get it and that is a discouragement. And then it eliminates from the Tax Code a provision that encourages donations of appreciative property. I believe this is unwise and unneeded.

You know, from cradle to the grave, from kids to the elderly, the bill is unfair and hawks and rooks people on taxes they pay.

What about the good in the bill, though? What about describing the good in the bill? Well, it does close loopholes. That is a good idea. And it knocks off the very low in income from paying any taxes at all. That is a good idea. And it does tax the profitable corporations, setting a minimum tax. And that is a good idea. And I do not quarrel with retailers who point out that they are paying more of their share and the bill has relief for them. Those are good points. Some of them relieve taxes and some of them, in closing loopholes, bring more taxes in and they should be paid.

The point is this: We could do the good things that I have mentioned—closing the loopholes, collecting taxes from those who are escaping paying taxes now—and pay for those good things in the bill without dragging in all this baggage that is adverse to economy, which is very damaging to indiviudal taxpayers, very damaging to those who are trying to make their livelihood in these basic industries, we could do all of the good things without doing the bad things.

There is no reason for dragging in the retirees and double taxation. There is no reason for doing that. That is totally unfair. It is poor tax policy. It is abominable tax policy and it should never be done.

We do not have to abandon the idea of the progressive income tax, as it virtually is abandoned in this bill. And above all, we do not have to have a mixed bag of totally unsupportable, totally unsupportable bad baggage in this bill—retroactivity, these other things that I mentioned—which all add up to create that question that was asked by the reporter on National Public Radio to the chairman of the Finance Committee, who is always very candid, and said: "In light of the serious objections that has been produced on this bill, but particularly in regard to the economic model where it indicates a drag on the economy for the next 5 years, should there not be changes? Is it wise?"

I think it is totally unwise and I am totally against the bill.

And so, when we have the opportunity, if the opportunity occurs, where the third part of the bill, House Concurrent Resolution 395, those 75 additional pages to add to all of this to make it three complete parts, revising the Tax Code under this bill, when it is open to amendment, I would hope to amend this final package and remove some of those horrible, horrible tax policies, horrible steps in the wrong direction, so we could have, truly, an opportunity for the people who are going to be damaged to get some redress before the final action occurs.

I hope we get that opportunity. It is my understanding that the third segment of House Concurrent Resolution 395 could conceivably be held there and never called up. And if that is done, of course, we have no opportunity to correct some of the dangerous laws, bad baggage, in this bill. But I hope the opportunity does occur, and I hope that we will have a chance to make some changes in the public interest.

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

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. I thank the Chair.

Mr. President, I rise to discuss this tax bill because of its importance and because it is going to affect all Americans for a long, long time. I have labored in this Chamber for the 10 years that I have been in the Senate in an attempt to further tax reform. Probably everybody has made their share of speeches on tax reform and I am no different, Mr. President.

□ 1140

I have worked on it. I think some certainly have worked harder and longer than this Senator. Some have devoted a great deal of time—especially those on the Finance Committee, trying to put together a bill that would be comprehensive and of course fair. That is what we are talking about today. Does this bill meet the criteria that we need for tax reform?

I want to comment the chairman, Senator PACKWOOD of Oregon, and the ranking member, Mr. LONG of Louisiana, for their dedication and their hard work. It is no simple task—Senator BRADLEY from New Jersey, Senator DANFORTH from Missouri, and others on the Finance Committee have spent a great deal of time working to put together what was supposed to be true tax reform, and tax simplification. It is a new era in paying taxes.

No one that I know likes to pay taxes. No one wants to pay more than anyone else. But people have a general sense in this country that we do not have a fair tax system, but that we need a fair tax system. We are confronted today with the question: Is this fair?

We have heard many say that it is fair; that it does some very important things, and I concur. First, it takes 6 million working poor or low-income people off the tax rolls. That indeed is fair, and something that I support and believe is necessary. This bill also imposes a strict minimum tax on most of those 13,000 Americans who had incomes over $1 million last year, and paid no taxes. There is also a tough minimum tax on corporations who through the tax system and without breaking the law have been able to escape paying any taxes.

We all admire that part of the bill. At least this Senator does, and I think everybody supports it. Perhaps, there are a few of those who will now have to pay taxes who haven't in the past who would still like to see the old system.

We are nonetheless confronted with a tax proposal that has some real problems. Is this simplification? Is this massive work that has been put together, two volumes of roughly 1,800 pages—is that simplification? I rather doubt it.

I have proposed, Mr. President, for some years a tax proposal put forth by Professors Hall and Rabushka of the Hoover Institute out of Stanford University. It is radical. It is really new. It strikes at everybody. And some people really dislike it because it touches a sensitive core that is very important to them. But it treats everybody the same. For example, it helps out the working poor. A family of four making under $12,600 will pay no tax. After that everyone would pay a flat tax.

The Senator from Idaho and I introduced that. Then we modified it so we had some progressivity in the bill instead of one flat rate of 19 percent. We had two. But we eliminated almost every deduction.

We had a system that, if you were in business, you could fill out your income tax return on this postcard. This would apply if you were the Exxon Corp. or the IBM Corp., or whether you were a small business in

New York City or Phoenix, AZ. If you were an individual, you also had a postcard, whether you were the President of Chrysler or IBM or whether you were working for an hourly wage.

We eliminated all of those deductions, shelters, and benefits that have been put in the code, many for good reasons, in hopes that we would have a system that would bring a real change. We hoped it would restore the confidence of the American public and that they would believe that everybody was going to pay their fair share, nobody was going to escape. Business would no longer have shelters and deductions, but they would not have to pay tax on their actual investments. they would write those off as expenses until they are totally written off. All the cost of their products would be written off, but no longer could they write off jet airplanes, country club dues, and other excesses as we have seen in the corporate world.

Well, Hall and Rabushka went by the wayside. The Senator from New Jersey, Mr. BRADLEY, and the Congressman from Missouri, Mr. GEPHARDT, came up with their proposal which is not too far from what the Senate passed a couple of months ago. I take my hat off to those two gentlemen for their tireless effort to bring a simple, modern, slightly progressive income tax while eliminating most deductions. Is that what we got?

I do not believe so, Mr. President, though this tax bill eventually gets us to two rates of 15 percent and 28 percent. I have real problems in concurring that this is simplification.

I do not know that this does what we really want to achieve.

Yes, there is a sense of fairness in the bill. But wait until we see what is in this bill. And I dare say, I will submit to anyone in this Chamber or in the country. Is this bill really fair?

First, let me say that there are indeed some positive things in the Senate bill, and I voted for that bill last June. I had great reservations about the bill but I thought here is an opportunity to move into a conference and into negotiations with the House members of the Ways and Means Committee and to come forward with a bill that is real simplification and reform.

At that time, I said that I was going to vote for this bill with the true hope the individual retirement accounts would be substantially improved and provide a greater incentive for savings for more Americans. The changes were not a wide-sweeping as I had hoped.

I was deeply concerned about the elimination of the sales tax deduction. The State of Arizona relies heavily on the sales tax. I had hoped that there would be some consideration in the final version for those States that do not have high income taxes, but do have a relatively high sales tax. There was no such consideration.

The change in the 3-year basis recovery rule for Federal retirees is simply unfair. But worst of all is to make it retroactive to July 1, 1986. That is unfair. It was not in the Senate bill.

The transition rules we are told are necessary, and that we must have a smooth transition to the new law. Let me talk about one particular rule known as the steel transition rule. The special rule provides for the steel industry of this country. This is outrageous. It is not that the steel industry is doing so good, but if we are going to allow the Government to subsidize an industry, we ought to be up front about it and not pretend that we are passing a reform bill.

First, it is not a true transition rule. By definition, a transition rule is to smooth the transition from current law to the new tax bill. However, the steel transition allows a practice that would not be allowed under current law. In the end, the result would be that the Treasury Department will actually write checks to a number of U.S. steel companies totaling in excess of $400 million—perhaps close to one-half billion dollars.

The rationale we are given for this transition rule is that the steel industry has been particularly hard hit, and therefore we must do something to help that industry.

Well, Mr. President, I can tell this body a thing or two about industries that are hard hit. In the State of Arizona, the copper industry has lost 50 percent of its workers—14,000-plus workers no longer have jobs, and half of the mines in the State have been closed. The copper industry has not made profits in the last several years. It is not just in Arizona that the copper industry is so hard hit. It is nationwide. I have been told that the timber industry has similar problems, and similar unused investment tax credit.

Why should they not be helped? Why is steel alone singled out?

□ 1150

The issue comes down to this: Is it fair? I do not think so. I do not think it is fair to single out this industry and have the taxpayers write checks for those unused tax credits that were available when they did not make money and apply them to years when they did make money.

Let us talk a little bit more about some of these other transition rules. It is important that we look carefully at them:

On the minimum tax, we all think that everyone should pay a minimum tax. It is only fair. It is part of being a citizen.

There are three interesting examples of companies to whom the minimum tax does not fully apply. I cannot justify voting for this bill unless that is clearly resolved.

One is Control Data on page 274 of the report, which gets a $25 million break on its minimum tax.

Commonwealth Edison and Middle-South Utilities also get special breaks. We do not know how much the Treasury is going to lose to Commonwealth Edison because the minimum tax does not fully apply, but Middle-South Utilities gets away with $20 million.

Let's look at charitable contributions, most universities will no longer be able to sell athletic seating rights and then have the cost of that serve as a charitable deduction.

That may be necessary to really simplify this bill, well and good. But it is interesting that two universities still have this availability. One is the University of Texas and the other one is identified as Louisiana Academics and Athletics.

Why? Why single these people out for special benefits? I wonder.

What about pension programs? We have a strict rule in this bill that says, "You cannot as a company go in and invade your pension fund and take that money out without paying a penalty so you can be sure that the money will be there when the time comes for the retirees."

However, several companies are exempt from paying that.

Phillips Petroleum Co. will avoid paying $75 million when it takes money out of it's pension plan. Lukens Steel Co. gets a $1 million break, Chris-Craft of New York gets $1 million, Dresser Industries gets $12 million, and Frontier Airlines gets $2 million.

What about low-income housing? There is a generic low-income housing transition in this bill, which is important. I compliment those who considered that a necessity.

The revenue cost of that generic rule, applying to all low-income housing projects, is estimated at $500 million, which is a hefty little piece of change. However, in addition to the generic rule for low-income housing, we have a few others that happened to squeak in.

Chicago Projects for $50 million, the New York City Housing Development Corp. for $50 million, one called Sharp out of Massachusetts for $50 million, and the Texas Rural Low-income Housing Project for $1 million.

It goes on and on, whether we talk about rapid amortization, or accelerated cost recovery system and investment tax credits. There are 220 transition rules in the report for the accelerated cost recovery system and investment tax credit.

Are these good proposals? I do not know. I just got them the day before yesterday.

Are they all worthwhile? I do not know. I can say when you have that many, you have to question the real integrity of this legislation.

I am going to submit for the RECORD right now a list of some of these rules.

The list includes Pan American, $26 million; Delta Airlines, $46 million; Texas Air, $10 million; Northwest Orient Airlines, $61 million; Brooklyn Navy Yard, $9 million.

The list goes on page after page after page after page.

Mr. President, I ask unanimous consent that this list be printed in the RECORD at this point.

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

ACCELERATED COST RECOVERY SYSTEM/ INVESTMENT TAX CREDITS

The following is a partial list of the 220.

(NA indicates dollar figures were not made available. M indicates millions of dollars of revenue loss to the Treasury)

Pan Am $26m.
Delta Airlines $46m (GA).
Texas Air $10m.
Northwest Orient Airlines $61m (MN).
Brooklyn Navy Yard $9m (NY).
Brooklyn Renaissance $3m (NY).
Riverwalk $9m (NY).
Carnegie Hall $4m (NY).
Audubon Research $2m (NY).
Viacom $1m (NY).
Merrill Lynch Center $4m (NY).
New York Coliseum Redevelopment, no loss (NYC).
Times Square Redevelopment $27m (NY).
New York Metro Transit Authority $NA (NYC).
Long Lake Energy Corporation $23m (NY).
Pioneer Place Parking Garage $6m (Portland, OR).
Harbor Place $10m (Baltimore, MD).
Atlanta Underground Project $7m (Atlanta, GA).
New Orleans Riverwalk $5m (Louisiana).
Ownings Mill Town Center $9m (MD).
Bayside Center $6m (FL).
Enesco $11m (MO).
Sverdrup $1m (MO).
Vidalia Hydro $94m (LA).
Rialto Tire Burning $2m (CA).
Gilbertine Power, $NA (PA).
Allegheny Electric Coop $10m (PA).
Hellsgate Hydroelectric $NA (CO).
Archibald Power $9m (PA).
Texas City Cogeneration $29m.
Montana Hydroelectric/cogeneration projects $68m (MT).
United Telecom $234m (MO).
Agri-Beef $NA (ID).
MCI $34m.
Alcoa $31m (TN, IO, IN).
PPG $4m.
Pacific-Texas Pipeline $187m (CA, AZ, TX, NM).
Phillips/Point Arguello $59m (CA).
RCA Satellite $1m (NJ).
COMSAT Satellites $0m (DC).
New Orleans Saints $1m (LA).
Greenriver Laundry Plant $5m (WY).
Lake Superior Paper $29m (MN).
Kaiser Power $17m (CO).
Dulles Rapid Transit $6m (DC area).
Temple Inland ($3M) Texas.
Electro/Mold (no loss) Minnesota.
Satellite Industries, Inc. (negligible loss) Minnesota.
Peat Products ($1M) Maine
Super Key Market (negligible loss) Kentucky.
Bethel Cogen (negligible loss) Maine.
Back Bay Tower ($1M) Oregon.
Eastman Place ($1M) New York.
Marquis II Project (no loss) Georgia.
Mid-Coast Marine ($1M) Oregon.
Biogen Power ($9M) Arizona.
Lodging Property (no loss) Iowa.
Brammer Manufacturing Co. (no loss) Iowa.
Lynmer Manufacturing (no loss) Pennsylvania.
Weyerhaeuser ($6M) North Carolina.
Duke Power ($NA) North Carolina.
Kenosha Harbor ($2M) Wisconsin.
Point Gloria ($1M) Massachusetts.
Lakeland Park Phase II (no loss) Louisiana.
Santa Rosa Hotel ($1M) Florida.
Esplanada Village (no loss) Louisiana.
Sheraton Baton Rouge ($2M) Louisiana.
RCI Corporation ($2M) New York.
Kansas City Southern Fiber Optics ($4M) 10 States.
Hardage Enterprises ($6M) State Not Indicated.
Brown & Brown (no loss) Kansas.
Koch Refinery ($7M) Minnesota.
General Aviation Aircraft ($27M) 4 States.
Nichols Boat ($9M) Washington State.
Kennecott Copper ($28M) Utah.
Trolley Square ($1M) Utah.
Pullman Leasing ($1M) Illinois.
Rumford Cogen/Boise Cascade ($27M) Idaho.
Coeur D'Alene Mines ($2M) Idaho.
Media General ($1M) State Not Indicated.
Myrtle Beach ($1M) South Carolina.
Brendle's Inc. (no loss) South Carolina.
Bristol Project (no loss) Rhode Island.
SouthernNet Fiber Optics ($3M) Virginia.
Sierra Pacific ($23M) Nevada.
Reading Anthracite ($43M) Pennsylvania.
Atlantic Richfield ($5M) Alaska.
Mesa Airlines (negligible loss) New Mexico.
Cargill/Northstar Steel ($3M) Ohio.
Mesaba Airlines ($1M) South Dakota.
Sixth & Broadway Project (no loss) Iowa.
Northwestern National Life Insurance of Minneapolis ($1M).
Flushing Center ($5M) New York.
Southeastern Michigan Sports Stadium ($2M).
S.S. Admiral ($7M) Missouri.
Harbert/Infilco Degremont, Inc. (Harlington Wastewater) $NA.
Fort Howard Paper Company ($39M) Georgia.
Central Gulf Lines ($8M) Louisiana.
Monsanto—3 projects ($2M) Missouri.
Greenville, S.C. Wastewater Treatment Plant ($3M).
Delaware Otsego ($1M).
Crown Cork & Seal ($5M) Mississippi.
International Paper ($14M) State Not Indicated.
Covington Riverfront Project ($2M) Kentucky.
Manchester Solid Waste ($3M) New Hampshire.
Mountain View Apartments (no loss) Massachusetts.
Morgan Guaranty Trust Co. ($32M) New York (Wall Street Bldg).
Chrysler Belvedere & St. Louis Plants ($78M) ILL & Missouri.
Peabody Place ($5M) Tennessee.
Ultrasystems-Ogle and TEORCO ($14M) California.
Park Forest/Town Center Redevelopment ($1M) Illinois.
Dexter Corporation Cogeneration Facility ($8M) Connecticut.
Eugenie Terrace ($4M) Illinois.
Brockton, MA Magnetic Resonance Imaging Clinic (no loss).
Mendota Biomass Power Project ($3M) California.
Drexel Burnham Office Building ($20M) New York.
Honey Lake Alternative Energy Project ($1M) California.
Derry, NH Waste-to-Energy Project ($2M).
Burbank Manors (negligible loss) Illinois.
Los Angeles Solid Waste Disposal Project ($5M) California.
Oxford Place ($1M) Oklahoma.
St. Charles Mixed-Use Center ($4M) Missouri.
Illinois Diversatech Campus ($20M).
Navistar ($2M) Illinois.
Zimmer Coal Plant ($71M) Ohio.
Ponderay Newsprint Co. ($7M) Washington State.
Presidential Airlines ($7M) Virginia and South Carolina.
Standard Telephone Company (no loss) Virginia.
Ann Arbor Railroad (no loss) Michigan.
Ada, Michigan Cogeneration ($5M).
Anchor Store Project ($2M) Michigan.
East Bank Housing Project (negligible loss) Michigan.
Wurzburg Block Redevelopment ($2M) Michigan.
Legett and Platt ($2M) Missouri.
Folz Corporation (no loss) New York.
Grand Rapids Arena Project ($2M) Michigan.
Campbell Soup Company ($12M) Pennsylvania & California.
U.S. Trust (Boston Bank) ($1M) Massachusetts.
Harlem Third World Trade Center ($6M) New York.
Overton ($4M) Florida.
El Monte, California Busway Terminal ($1M).
Muskegon Ferry ($1M) Michigan.
S.S. Monterey ($8M) New Jersey.
Steel Rule Modification (LTV) (no loss) State Not Indicated.
Holland Center ($1M) Michigan.
McLouth Steel ($1M) State Not Indicated.
Spray Cotton Mills (negligible loss) North Carolina.

Mr. DECONCINI. Next is rehabilitation tax credits. There are 71 transition rules of that in the report. There is a lot of good to be said about rehabilitation tax credits, but why should only those projects with savvy lawyers or good political contacts be able to take advantage of them?

I ask unanimous consent that the list that I submit to the Chair be printed in the RECORD.

They include such things as Old Main Village, $1 million; Barbara Jordan II Apartments, $1 million; the Willard project, no cost on this one but we know that is right here in Washington. It goes on and on.

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

REHABILITATION TAX CREDITS

(NA indicates dollar figures were not made available. "M" indicates millions of dollars lost to the Treasury.)

(Not a complete list.)

Old Main Village $1m (MN).
Washburn-Crosby Mill $2m (MN).
Barbara Jordan II Apt. $1m (RI).
Lakeland/Marble Arcade $1m (FL).
Warrior Hotel $NA (IO).
Willard Project $no loss (DC).
Waterpark $2m (NB).
H.P. Lau Building $1m (NB).
620 Project $1m (KY)
Starks Building $1m (KY)
Bellevue High School $2m (KY).
Robert Mils Project $NA (SC).
Bellevue Stratford Hotel $6m (PA).
Motor Square Garden $5m (PA).
Penn Station/Madison Square Garden $21 m (NY).
30th St. Station $5m (PA).
Bigelow-Hartford $3m (CT).
Shriver-Johnson & Blackstone Inn $1m (SD).
Wayne County Courthouse $4m (MI).
LA City Library $7m (CA)
Dixon Mill $2m (NJ).
125th St./Harlem Urban Devlp. $11m (NY).
American Youth Hostel $1m (NY).
River West Loft Devlp. $1m (IL).
Gaslamp Quarter Historic District $4m (CA).
Eberhardt & Ober Brewery $1m (PA).
Mount Vernon Mills $1m (SC).
Charleston Waterfront $2m (SC).
The Tides $1m (RI).
Kiel Auditorium $12m (MO).

Mr. DECONCINI. I must say there are some transition rules in here that benefit the State of Arizona. I am glad they are there. If we are going to play this game of favorites, I do not want Arizona left out. Our sports stadium that may be built soon is also included, along with about 29 other sports facilities. A lot of those got in.

But I would give them all up, I would give up all the transition rules for the great State of Arizona, if everybody else was willing to play the same game. But everyone won't. That is why this bill is really not a fair, simple tax bill.

The revenue losses that are going to be generated by this bill from 1987 to 1991 are a minimum of $286 million. How can we come forward at a time of the highest deficits ever and propose legislation that is going to cause a greater deficit?

In the first year there will be a $11.4 billion increase. But in 1988 there will be a $16.7 billion loss to the Treasury? In 1989 when there will be a $15.1 billion loss?

Overall, this bill is going to cause more deficits and that really disturbs me.

Economists really argue over the effect of bill.

Some say it is going to help things and some say not. Murray Weidenbaum foresees a disaster as a result of this bill. He predicts a 1-percent reduction in GNP in 1987 and that the unemployment rate will climb by one-half percent next year.

Chase Econometrics say there will be a modest anticipated drop in growth of four-tenths of 1 percent. This will continue to be argued for a long time.

But on the question of fairness and equity, it really is no wonder the American taxpayer doesn't have much confidence in this Government when we promote and we talk and we cite tax simplification, and then we add an additional 400 transition rules put into this bill. It is a ripoff of the taxpayers.

When this bill passed the Senate there were several hundred transition rules and I voted for that bill with great reservation.

I said then that I would give up those few minimal rules that are there for Arizona if we played it fair and did away with them all.

That is not what has happened. We have compounded this by adding 400 more. We are not quite sure if $10 billion covers the loss to the Treasury.

Mr. President, perhaps some will say we made a gallant try on the floor of the House and the floor of the Senate. Let me say to the chairman and the ranking member I understand the difficult problem they have been confronted with. The President has made this a high priority. The public wants true tax reform. I understand the art of compromise.

I know what the need is, to try to put together legislation that can be passed and worked out fairly.

But have we really met the challenge that the people of this country have asked us to meet? Have we come forward with a fair bill that treats everybody alike?

Have we left out a few special interests? If we have, that is good. But there are more than 600 special transition rules in the bill totaling $10 billion of the taxpayers' money. That is more than this Senator can tolerate, for this reason alone it is not a good bill.

Mr. President, I yield the floor and I reserve the remainder of my time.

□ 1200

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, in a moment, I shall put in a call for a quorum and ask unanimous consent that it not be charged against either side.

I suggest the absence of a quorum and ask unanimous consent that it not be charged against either side.

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

The clerk will call the roll.

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

The PRESIDING OFFICER [Mr. DOMENICI]. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I yield such time as the distinguished Senator from Virginia may need.

Mr. TRIBLE. Mr. President, I thank the Chair. I thank the distinguished Senator from Oregon, and I shall follow his leadership on this tax reform measure.

The tax reform measure is not a perfect one, but it is a good bill and it moves us in the right direction. Lower marginal tax rates will be an incentive for greater economic growth and job creation. This bill will create a fairer tax regime where similarly situated taxpayers will pay roughly the same amount of tax and everyone will pay his fair share.

Moreover, this bill will create a more productive economy, one where economic decisions are based on merit, on real return, and not on tax avoidance. For these and other reasons, I support this measure. I commend the chairman for his leadership.

Let me spell out my thoughts more fully. By dramatically reducing marginal tax rates for all Americans, we will vastly improve the incentives for working, saving, and risk-taking. The result will be an economy that operates more productively.

Ultimately that means more and better paying jobs for all Americans. Significantly lower personal and corporate rates mean that investment and spending decisions will be made on the basis of return—not on the basis of tax avoidance. It will be economic merit, not tax considerations that will drive resource allocation. The result will be an economy that operates more efficiently and effectively.

Our Tax Code now is replete with numerous incentive provisions which encourage some investments rather than others simply because of tax preferences. Government intervention of this sort is cumbersome and inefficient. This bill is a major step in reducing Federal intervention and liberating the economy from the Tax Code.

These incentives are created by making the Tax Code fairer. This bill closes loopholes and imposes a stiff minimum tax on corporations and individuals, thus insuring that everyone pays their fair share.

This bill will dramatically reduce the ability of corporations and individuals to avoid taxes by exploiting loopholes in the law.

For most American taxpayers, this bill means tax reduction. Those for whom shelter means a roof over their head will benefit greatly from this legislation. Put simply, income taxes for typical taxpayers are reduced at every level of income.

This bill contributes to tax simplification. As many as 10 million taxpayers will no longer need to itemize. Instead they will use the short form. Millions of Americans can give up the part-time job of keeping records for the IRS.

The prospects for our Nation and our economy are promising. Rather than being a vehicle for social or economic experimentation, our Tax Code

will be a far simpler system designed to collect necessary revenues. The Government's influence over economic decisions will decline and that of individuals will rise.

A smaller role for Congress in allocating resources means a more vibrant and productive economy. The creative energies of Americans will be channeled toward producing goods and providing services and away from seeking favors in Washington.

Although this is generally a fine bill, it needs to be improved in a number of areas and I hope Congress will act promptly to make these changes.

One area of special concern is the tax treatment of contributory pension plans.

For many, many months I have opposed any changes in the method of taxing contributory retirement benefits. I sponsored legislation to keep the current taxation scheme by retaining the 3-year-basis recovery rule. I offered an amendment, narrowly defeated during debate on the tax bill, which would have maintained the current tax method, permitting retirees to receive previously taxed contributions to their pension programs before being subjected to Federal taxes.

I warned my colleages of the drastic consquences of ill-conceived changes. Simply stated, elimination of the 3-year-basis recovery rule will undo years of financial planning by some 30 million Americans who are affected by the basis recovery rule.

I urged my colleagues to be fair, to be just, while considering tax changes. Millions and millions of individuals and families have based their retirement plans on the expectation that under the 3-year-basis recovery rule, they would not be taxed as they withdraw their own aftertax contributions to their retirement programs.

Unfortunately, the provisions of the tax reform conference report affecting the basis recovery rule are not fair. It is unjust to change the rules of the game in effect for the last 30 years when people have made retirement decisions based on this important provision.

Mr. President, not only are these inequitable tax changes being suggested, but the conference committee has determined that they should be made retroactively. Drastic changes in the tax laws, costing individuals thousands of dollars, upsetting retirement plans, are to affect individuals retroactive to July 1, 1986.

Any public employee who retires after July 1, 1986, would be subject to significant tax changes. Mr. President, this is unprecedented. Such treatment of individuals is unconscionable.

The tax reform measure contemplates thousands of changes in current tax law. Yet, of all the changes being proposed in the reform measure, only one provision, affecting individuals only, would apply retroactively. The single retroactive provision applies to public employees who contribute to their retirement programs, by eliminating the 3-year-basis recovery rule effective July 1, 1986.

Why are these 20 million people being singled out for such treatment? Why are we asking them to accept a loss of financial security which we have not required of any other individuals? What is so special about these people that they are the only ones to be subjected to unprecedented tax changes?

Mr. President, I am deeply disturbed by these provisions in the conference report. I think that public employees deserve better treatment, fairer treatment, and hope that Congress will act to restore fairness in this area.

Second, I believe we need to do a better job in providing incentives for investment. There are two areas that are particularly troublesome, the treatment of depreciation and capital gains.

The treatment of depreciation of capital goods is far more restrictive than the current system. I believe this will adversely affect investments in plants and equipment and this issue should be addressed promptly.

Moreover, while it may be appropriate to tax capital gains as ordinary income, it is inappropriate to tax inflationary gains in this manner. Only real gains should be subject to this tax.

Finally I have reservations about the raising of the floor for the deduction of medical expenses. The conference report increases the level from 5 percent of gross income to 7.5 percent. These expenses are not chosen and there is little control that individuals have over these costs.

These concerns, notwithstanding, I believe the good outweighs the bad and that this measure represents an improvement over our present Tax Code. I urge my colleagues to adopt this conference report.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. Does the distinguished Senator from Louisiana yield time to the distinguished Senator from Alabama?

Mr. LONG. I yield, Mr. President.

Mr. HEFLIN. Mr. President, I voted for the Senate tax bill. I did so with some reluctance, but I felt that weighing it in the balance, the Senate bill we passed was good for America. However, I have even greater doubts about the conference report and I am genuinely undecided. I shall continue to listen to the debate. Perhaps it is the experience of having been a judge that makes one want to deliberate carefully before reaching a decision on a matter that could seriously alter the economy of this Nation, and the future of our children and our grandchildren.

First, I want to praise the committee and the chairman, BOB PACKWOOD, who has worked diligently and endeavored to produce a bill that tries to balance equities in a fair manner. I congratulate Senator BRADLEY for the work he has done on this, and especially the master of the tax laws, Senator LONG of Louisiana, who has a tremendous influence on this legislation. I congratulate him, as I have done in the past, for his mastery of complex tax laws and the consequences they will have on the American economy.

I know there are a number of Senators like me who are genuinely undecided. This morning, as I came to the Senate, I ran into Senator NUNN. He and I discussed the tax bill. We both are still undecided. He said, "You know, I feel like perhaps we are engaged in a poker game in which there are no limits and that perhaps we are gambling with America's future. We may be throwing dice relative to the future of our children and grandchildren."

Well, I have never been a gambler. Perhaps my upbringing in a Methodist parsonage as the son of a Methodist minister instilled in me certain beliefs about the ills of gambling. Besides, I grew up in a depression, when a person knew the value of a dollar, and knew that we ought to be careful about the way we spend it.

I played a little poker when I was overseas in the Marine Corps, but I was not very successful, so I gave it up. I never threw dice. I just thought it was too fast a game for me, too risky, too uncertain. So I have always been cautious about gambling with anything, my investments or my livelihood. I have tried to follow a path of being a fiscal conservative.

The first bill I introduced when I came to the Senate was a constitutional amendment to require a balanced budget, and I have continually fought to see that such an amendment is added to our Constitution. I have supported every effort to reduce deficit spending. I gave support to the Gramm-Rudman-Hollings deficit reduction plan. I have supported deficit-reducing budgets throughout my Senate career. I have supported the line-item veto.

Perhaps the biggest mistake I have made since I have been in the Senate was to support the 30-percent supply side tax cut, which has really produced the horrendous deficit problem that we are struggling with today.

I am worried that this tax bill will gamble with America's future too much. I worry that it is too risky. I worry that there are too many uncertainties within the bill and too many uncertainties as to its future influence.

I am terribly afraid that this tax bill causes misplaced priorities. With our ever-increasing deficit approaching as-

tronomical figures, I think we should be concerned with reducing deficit spending instead of allocating potential resources, which could be used toward reducing the deficit, toward nonproductive efforts. This administration has cut nonmilitary government spending substantially during the past 5½ years.

□ 1210

Some of these cuts have been wise but some have been harmful to certain segments of our economy and society. We are faced with the ultimate fact that if we are going to maintain strong military strength to deter military aggression from our enemies and reduce deficit spending, there is no question that additional revenues and further nonmilitary program cutting is going to be necessary.

When we look at potential areas of additional revenue, we dig our heels firmly into the earth and say that we should not increase any taxes which would bring about a business decline or would prevent business growth. Our greatest need today is lasting jobs. I am utterly opposed to increased taxation on the individual.

However, there are clearly areas that revenues can be found without harm to overall business growth and without causing problems to the average taxpayer. But unfortunately this tax bill will eliminate the potential use of these areas for deficit reduction.

Yes, we need to close loopholes, but when loopholes are closed, the revenues gained should be directed toward deficit reduction. Tax shelters need to be eliminated, but when they are eliminated, the gain to revenue should be used to reduce deficits. Profitable corporations which have not been paying taxes should be paying taxes, but when such taxes are paid they should be directed toward the deficit.

I have heard certain administration officials brag to wealthy taxpaying groups that the maximum income tax rate on individuals will have been reduced from 70 to 28 percent under this administration.

Newton's third law of motion states "for every action there is an equal and opposite reaction."

What is the reaction of reducing the tax rate from 70 to 28 percent? The answer comes through loud and clear. "Triple the national debt." To me there is justification for labeling certain Members of Congress as the tax-and-spend crowd. Now there are many who should bear the title of the borrow-and-spend crowd. We must face up to the fact that after the tax bill passes there will be few loopholes to close, fewer shelters to dismantle; the minimum corporate tax will have been misdirected. In other words, many palatable sources of revenue that could have been used to fight the battle of deficit reduction will not be available.

There is a malady that I fear as a result of this tax bill and that is the disease that I will refer to as "rate creep."

Since the tax base now will be larger, we will not be confronted with the difficult task of facing a 10- to 15-percent tax increase vote in the future, but in the future I am afraid I will hear rhetoric ringing forth in this Chamber and in the House of Representatives that the public will understand and accept a 1- or 2-percent tax increase. Then the following year I fear we will hear the same argument. Perhaps a good analogy for "rate creep" is "weight creep." If you are not careful, you can gain 2 or 3 pounds a year and it is not too noticeable, but whether it be "rate creep" or "weight creep," 3 pounds or 3 percent a year amounts to 30 pounds or 30 percent over a 10-year period. Hopefully, 10 years from now, we will not see tax rates back where they are today with no deductions. "Rate creep" is a disease for which we must find a preventive cure.

Another problem that causes me concern about our misdirected priorities is in the area of trade imbalance. Senator BOREN made an excellent speech in which he brought out the fact that we may really be defeating the "Buy America" spirit that is beginning to grow in this country. He mentioned that we are taking away many incentives for American industrial growth. We are doing away with the investment tax credits and the capital gains deduction. We are also greatly stretching out the depreciation schedules.

Mr. President, I would now like to turn to treatment of the farmer under the tax reform bill. I was dissatisfied with the way Treasury I, Treasury II, the House bill and the Senate Finance Committee bill impacted rural America. When the tax reform bill was on the Senate floor, we made some adjustments in the treatment of farmers. I was very discouraged when the conference report came back without these provisions. I am greatly concerned with the impact this bill will have on rural America, particularly our Nation's farmers, without these provisions. There is no doubt that any tax reform legislation that is approved by Congress and signed into law by the President will have a significant impact on farmers for many years to come. But, I am afraid this bill will have a devastatingly negative impact on agriculture.

A primary goal of tax reform is to bring fairness to our tax system by abolishing loopholes and shelters used by wealthy individuals at the expense of lower- and middle-income taxpayers. H.R. 3838 boldly attempts to achieve this goal by significantly lowering the tax rate for all taxpayers and making up the loss of revenue by abolishing loopholes that serve no socially useful purpose and that distort economic decisions. Unfortunately, farmers depend on many of the incentives in the Tax Code in order to keep their farms running and their heads above water. The economic troubles of rural America are well known. Thousands of farmers have lost their farms.

Will this legislation change this trend? I am afraid not, Mr. President. Will it increase this trend? Mr. President, I am seriously concerned that it will add nails to the coffin of American agriculture.

I am concerned and alarmed at the current economic climate that exist on the farms in Alabama, and all across America today. The economic statistics make it clear that our farmers are in a state of economic depression. Farm income continues to decline. Last year, net income was only $27 billion. This was $8 billion lower than 1984. If the 1985 figures are adjusted for inflation and expressed in "real" dollars, net income was barely one-half of 1979's level. In fact, Mr. President, real net farm income last year was lower than the real net farm income in 1929. Real net farm income was higher in 1939 than it was last year.

Mr. President, I hope my colleagues will closely examine the impact H.R. 3838 will have on future farm income before they vote for final passage. Will this bill stimulate increased revenues for our financially distressed farmers? I do not think so Mr. President.

I want to take a moment to explain, provision by provision the potential impact of this highly praised tax bill on our Nation's farmers. First, farmers would no longer get capital gains treatment from the sale of section 1231 property which includes livestock or timber. Under this bill a noncorporate family farm, with a taxable income of $35,000, would be taxed at a rate of 28 percent on the capital gain from the sale of an asset. Let me make that clear, gains from the sale of capital assets held for any period of time, 3 months of 30 years will be taxed as normal income. Under current law, the tax rate on that same income would also be 28 percent, but only on 40 percent of the gain, thus the effective tax rate would only be 11.2 percent. Also stop and think about the family farmer whose income is between $75,000 and $150,000, the capital gains rate is 33 percent.

Total farm assets declined more than 10 percent last year. Estimated asset value is now $865 billion, down 22 percent from the $1.1 trillion peak reached in 1981. The owner's equity in these assets has fallen to the lowest level since 1977. Will the elimination of the capital gains treatment from

the sale of section 1231 property enhance the value of farm assets? I don't think so Mr. President. Many economists believe that eliminating these provisions will, in fact, further depress land and other asset values.

An even greater concern, Mr. President, is the problem this will cause with the families that had planned to use their farms as a source of income for their retirement years. Our Tax Code properly provides for a variety of retirement alternatives. However, in the real world many farmers and small business people do not have the necessary income to take advantage of these retirement programs. These people have all their equity wrapped up in the farm and this represents the bulk of their retirement program.

Mr. President, the one provision that alarms me the most is the repeal of income averaging. Income averaging has been a frequently used provision of the Tax Code up to about now. This provision is extremely necessary for farmers to even out their volatile changes in income. A farm family of five with an income alternating between zero and $40,000 per year would pay five times the tax as a family of five earning $20,000 each year. I believe income averaging should be retained for taxpayers with volatile incomes. Without it farmers with substantial income in the year of sale will not be able to offset that year's gain by prior years of low income or loss.

I addressed this concern previously, when this body considered the Senate committee bill. I worked with many of my colleagues who had expressed the same concern to amend the Senate bill. We were successful in reinstating this much needed provision. But the conferees did not see fit to keep income averaging for our farmers.

This bill also repeals the investment tax credit currently allowed for qualifying capital investments. Most farm machinery and equipment, many farm structures, and certain livestock qualify for the full 10 percent credit. For example, under current law if a farmer buys a tractor for $40,000 his after tax cost would actually be $36,000. If the investment tax credit is repealed his after tax cost would be $40,000 or $4,000 more than under current law. In 1983, farm sole proprietors held over $3 billion in accumulated tax credit and it is likely that current accumulated tax credits equal or exceed this level. Based on 1982 IRS statistics, a large share of these unused tax credits are held by farmers with substantial debt and with little or no off farm income.

Mr. President, hundreds and hundreds of farm equipment dealers and agricultural businesses have folded over the past 5 years. This of course, has devastated main street in many rural communities and small towns. Thousands of jobs have been lost. Economic growth in the farm-belt is dependent on the purchases made by the farmer.

Last week, a farm equipment dealer called my office. He had one question—when does the repeal of investment tax credit take affect? This year or next? When he was informed that it was repealed for property placed into service after December 31, 1986, the farmer that was negotiating a purchase left his office. Mr. President, this was a farmer that is trying to survive under the new farm policy. He is trying to increase his production and cut his cost, but to do so, he needs new equipment to be efficient. Will the repeal of investment tax credits give the needed incentive to increase capital purchases of new and used farm equipment? I do not think so, Mr. President.

I have read some arguments that if the investment tax credit is repealed, the hobby farmer and nonfarmer investor will be forced out of agriculture. This provision of the bill will rid agriculture of overinvestment, I am told. This provision of the bill will encourage only farmers to remain in agriculture, I am told. Mr. President, the IRS has stated that the largest share of unused accumulated tax credits are held by farmers with substantial debt and with little or no off farm income. The IRS agrees that investment tax credit benefits the true family farms. Beside, most hobby farmers and nonfarmer investors long time ago had sense enough to get out of farming. Will the repeal of investment tax credit benefit farmers by getting rid of over-investment in agriculture? I don't think so, Mr. President.

This legislation will also end soil conservation tax credits. Although this is a minor provision, one of little significance to the public, this is a necessary incentive. Farming is not profitable now. Few farmers have the income to justify investing in expensive soil conservation activities. This tax credit gave the little extra incentive to the stewards of the soil to preserve this essential natural resource for future generations. All Americans will lose with the repeal of this provision.

Mr. President, taken alone many of these provisions would not be detrimental to farmers. But added together these changes could prove devastating. I urge my colleagues to closely examine the impact this bill will have on rural America before casting their vote. I shall.

There is a lot of good in the bill. I have in previous speeches outline many of the improvements that will occur with this bill. I am weighing the good against the bad.

The last question that remains for me is whether or not to vote for this bill. I will continue to study this bill, continue to listen to the debate. I believe there is a genuine need for tax reform, but I am concerned about the matters that I have discussed today. As I study the bill further, as I listen to the debate, I realize that I must make up my mind and do what I think is best for this country. I need your advice. I pray I make the right decision for our children and grandchildren.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, I ask unanimous consent there be a call of the quorum without the time chargeable to either side.

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

The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

□ 1220

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

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

Mr. LONG. Mr. President, I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes.

Mr. HART. I thank the Senator from Louisiana.

Mr. President, the conference report we are about to approve represents the most memorable achievement of the 99th Congress.

It is a memorable achievement in part because it has been so long in arriving. The opportunity to vote for this conference report concludes a campaign that, for many of us, began with our entry into public life. The idea of a broader, more equitable tax base has had to fight for its life at every stage of its development.

The bill that has emerged from these trials is not perfect by any means. No one will find it perfect in every detail, as indeed the Senator from Colorado does not. Yet it is a far better bill than most of us would have thought possible 1 year ago.

It will be good for the taxpayer—not just because it will result in lower tax bills for most, but because of the manner in which it will lower those tax bills.

Equal incomes will be treated far more equitably. And every taxpayer will be encouraged to work more and earn more and invest more productively, with the opportunity to keep far more of what he or she earns.

That is why this bill will be good not only for individuals, and for individual businesses, but for our national economy—the sum of all of our efforts. Changing the philosophy of our Tax Code can confirm our national faith in

economic democracy—and so in the effectiveness of our political institutions, as well.

There is another reason this legislation stands out as a monument in the history of this Congress. A vote for this legislation is a vote for the long term good of the Nation over the short-term calculating of politicians.

We all know most of the benefits of this bill will take time to ripen. In the meantime, there will be doubts. Attention will be paid primarily to the widening of the base. We will hear from those who see only the sacrifice imposed upon their particular industry.

Despite this, an overwhelming majority of both Houses of Congress has shown itself willing to support fundamental reform.

And by so doing, we accomplish more than just the repairing of an inflation-ravaged tax structure. We reverse the trend toward ever greater tax expenditures, which in this decade have become a $400 billion a year hemorrhage in our body politic. We also put an end to 5 years of loophole widening and lopsided tax cutting for the benefit of corporations and the wealth—excesses that have contributed mightily to the greatest deficits in our fiscal history.

In this era of immediate political gratification, the willingness of Congress to resist special pleadings and support this far-sighted initiative is memorable indeed.

This Senator was pleased that the Senate bill predominated in conference. The Senate bill offered far more fundamental reform, making more income subject to tax at lower rates.

Much has been made of the progressivity issue, but the current law's progressivity is more apparent than real. We have high rates on paper, but the rich can shelter, exclude, or exempt far more of their income than lower or middle income people. Some estimates indicate that those who make more than $200,000 can now exempt as much as half of it.

This bill lowers everyone's tax rates. But, unlike the 1981 tax cuts, it recognizes that rates don't tell the whole story. The new law enlarges the personal exemption and the standard deduction so that 6 million of the working poor need no longer pay Federal income tax.

Working Americans who have no access to tax avoidance schemes will now find themselves paying less in tax and keeping more of the extra income they may earn. Four out of five taxpayers will pay no more than 15 percent on their taxable income.

This bill installs a tough minimum tax on both corporations and individuals, we need no longer tolerate the insult of major, profitable corporations that pay no Federal income tax.

This bill ends the 60 percent exclusion for capital gains income, so that those whose income comes from investments will be taxed just like those whose income comes from wages. Best of all, this bill ends the practice of using paper losses from one business to reduce one's taxable income from another. Tax shelters contribute to the deficit and distort economic investment.

In the final days of debate on this reform, we have heard that the bill—despite strong support from a Republican President—would actually be bad for American business. And it is true that the bill would increase the total tax burden on corporations by $120 billion over 5 years.

The important thing to remember here is how business taxes are increased. The rate is actually lowered, as individual rates were. But more revenue is raised because the over-generous provisions of the 1981 tax cut—accelerated depreciation—are reined in. Redundant credits—such as the investment tax credit—are repealed.

The tax windfall accruing to corporate takeovers is repealed. Entertainment expenses are no longer fully deductible. Tax deferrals under special accounting methods will be restricted. Is this a soak-the-corporation policy? No. It is a reinstatement of the rules of fair play.

The increase in revenue from corporation taxes—despite sharply lower rates—demonstrates how far the tax-avoidance game had gotten out of hand.

Obviously, such pervasive changes will take some getting used to by individuals, businesses, and the economy as a whole. But greater fairness is compatible with greater growth. And this Senator does not expect to feel nostalgia for a Tax Code that came to dominate everyone's everyday economic decisions.

Rather, this Senator expects this bill to be remembered as a breakthrough for the taxpayer and the economy—and as a demonstration that Congress had more conscience, more wisdom, and more courage than even its own Members believed it had.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. I yield 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. LEVIN. I thank the Senator from Louisiana.

Mr. President, today I know what it feels like to be the hometown fan who sits in the stands watching the visting team bound off the field after they have won the seventh game of the World Series.

I an understand their exhilaration. I can respect their skills. But I cannot join in their cheers of victory.

I cannot join in because I cannot explain to the 15 million middle and lower middle income Americans who will get tax increases under this bill why their tax burden had to become heavier as part of the worthy effort to make sure that all profitable corporations and wealthy individuals have at least some tax burden. I am afraid that in taking a long overdue swing at those who had not done their fair share, we ended up socking it to too many of those who do not have a fair shake now, middle income taxpayers.

I cannot join in because I cannot explain to middle-income taxpayers why tax reform required that of those getting tax increases, 80 percent had to be taxpayers making less than $50,000 a year.

I cannot join in because I cannot explain to an elderly couple with high medical bills making $15,000 a year why their taxes are going up at the same time that, according to the best information available, the average tax cut for taxpayers making over $200,000 is $50,000.

I cannot join in because I cannot explain to the renter or to the low equity homeowner why their ability to deduct consumer interest expenses has been eliminated or greatly restricted at the same time that other homeowners with exactly the same income have a way to deduct their consumer interest expenses and, thereby, pay less in taxes.

I cannot join in because I cannot explain to the parents of students who are going to college or to renters why some of them should feel better off even though their small tax cut will be outweighed by increases in tuition or rent.

I cannot join in because I cannot explain to anyone how this bill, which is trumpeted as a triumph of the general interest over the special interest, changes the rules in the middle of the game for tens of millions of Americans and gives special—I repeat special—treatment and privileges to about 700 corporations and projects.

□ 1230

On the subject of general versus the special interest, while the rhetoric is that this bill protects the common interest and is opposed by the special interests, the reality is that hundreds of lobbying groups endorse this bill and less than five oppose it as far as I know.

I cannot join in because I cannot explain to any one why we are engaging in this enormous effort without doing anything to help solve the fundamental economic problem facing this country today—the huge Federal deficit—and, in fact, why we are setting the stage for making deficit reduction more difficult and less fair.

I cannot join in because I cannot explain to anyone why we are passing this bill at this time when so many economists predict that, at least in the short run, it will slow down our already sluggish economy and run the risk of causing a recession. I cannot explain why we chose to ignore the warnings of some economists that in the long run it will result in fewer jobs at home and make us less competitive abroad. For our economy this is the wrong bill at the wrong time.

And, finally, I cannot join in because I cannot explain to anyone why the noble goals of tax reform—a tough minimum tax on profitable corporations and wealthy individuals, the closing of some awful tax loopholes, and the removal of 6 million working poor from the tax rolls—had to come at this high—this unacceptable high price. We could have achieved those goals and done something substantial and significant to reduce the deficit without paying that price. We Americans pride ourselves on our commonsense, on our shrewdness. But in this bill, we have not paid less to get more. We have ended up paying more to get less.

Mr. President, I again congratulate the managers of the bill, the chairman of the committee, the ranking minority member, particularly Senator BRADLEY, who for so many, many years has been fighting this cause, and while I cannot join in supporting the end product I have nothing but admiration for the people who worked so hard to put it together.

The PRESIDING OFFICER. Who yields time?

The Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, after I had spoken earlier this morning, I indicated that I intended to inquire of the chairman of the Finance Committee as to why certain companies and certain projects were accorded special treatment. I indicated then my concern that two Members of the Congress pretty much concluded who should be in and who should be out, and I think under those circumstances that we have the right to know what was the rationale for exempting certain companies from the general rules, and we have a right to know what is the public policy purpose that is being served and what debate transpired during conference consideration of this bill.

I think the distinguished manager of the bill has indicated that there were no actual votes on individual items by the members of the conference committee but that rather the leadership gave the package on the House side to those members and on the Senate side the same way.

If I could have the attention of the manager of the bill, I would like to point out to him that on page 76 of the conference report, paragraph 11, there is contained therein certain language, and I said to the manager of the bill before when we were speaking, not on the floor as such but in personal conversation, that he might not be able to answer certain of these questions immediately and if he needed a half-hour or hour in order to get the answer I will certain understand that because we are talking about 400 separate items. I have a feeling that the ones I am to ask him may concern matters that he can respond to at this point. On page 76 of the conference report, paragraph 11, it is therein provided:

CERTAIN AIRCRAFT.—The amendments made by section 201 shall not apply any new aircraft with 19 fewer passenger seats if—

(A) The aircraft is manufactured in Kansas, Florida, Georgia, or Texas. For purposes of this subparagraph, an aircraft is "manufactured" at the point of its final assembly;

(B) The aircraft was in inventory—

And these are particularly significant words—

• • • or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986—

Which was the date of according to this date of conference committee action, and three, and this is also particularly significant—first we have the aircraft was planned, not actually produced, and—

(C) The aircraft is purchased or subject to a binding contract on or before December 31, 1986, and is delivered and placed in service by the purchase, before July 1, 1987.

It goes on to provide that "Section 211(d)(2)(B) shall not apply to aircraft which meet the requirements of this paragraph."

What this means simply is that this bill, this conference committee report, these transition rules, provide investment tax credits for planes that do not exist yet. The planes are only in the planned production schedule and that further provides that benefit for buyers who do not exist yet and who cannot even be identified.

What we are talking about is putting on a platter $27 million for phantom beneficiaries.

What we are talking about is giving $27 million to some people who are going to buy planes and get an investment tax credit. They do not know at this moment they are going to buy those planes. There are no definite contractors. The planes are not produced. All they are is that they are in the planned production schedule.

I had understood, and I think everybody within earshot had understood, that transition rules apply to somebody who had taken certain action and proceeded under the tax law and assumed and then the new tax law changed and they get caught in midstream.

We are not talking about that in this instance. We are talking about a situation where planes have not yet been produced, orders have not yet been received, the identity of the order of those who are placing the orders is not even known. It means that the companies may go out between now and December 31, 1986 and say "Come on give me an order for this plane and if you order it before December 31, 1986, you get an investment tax credit."

Let me be very candid. These are not the only aircraft manufacturing companies in the country. This provision applies only if they are manufactured in Kansas, Florida, Georgia, or Texas.

I am told that there are aircraft companies in Arkansas and Delaware, that are not covered by these rules, companies currently known as Falcon Jet and West Wind. I do not know anything about those companies.

I do not understand how one company can go out and sell planes and say, "You are going to get an investment tax credit if you buy those planes" and another cannot. I do not know why these are called transition rules. I do not know why for planes that have not as yet been produced, that are not being produced—they are only in the production schedule—that buyers about whom nobody knows anything and nobody is in a position to identify them, we are giving away $27 million to them.

This is a rule that exempts noncommercial aircraft. No one signed a contract. I think we are entitled to know what companies benefit, but even more importantly than what companies benefit, because once we know the names, I do not know that makes me particularly satisfied. I think the real question is why is this provision in the bill, and I am told also that not only do they get the investment tax credit, but the buyers will have the right to use 5-year ACRS instead of 7-year depreciation.

□ 1240

And 7 years depreciation, I gather, would be straight-line depreciation, whereas 5 years ACRS would give them the right to have an accelerated depreciation at the early stage.

So since that is one of those special exemptions that I do not consider to be a transition rule, I wonder if the chairman of the Finance Committee would be good enough to enlighten me on this point. And I yield him up to 5 minutes of my time in order to respond.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. PACKWOOD. I thank the Chair.

This was a rule asked for, I think, by the majority leader; I am not sure. We were under the impression it covered all the domestic plane manufacturers

in the United States. General aviation manufacturers in this country are in desperate shape. We intended that any planes that were ordered by the end of this year and placed in service by July 1 next year be entitled to the investment tax credit.

It is not significantly different from what we have done for the major airlines, except there planes are normally not manufactured unless there is an order. So the major airlines got a rule that stated if they had ordered by a certain time, and the planes were to be placed in service at a certain time, they would get a transition.

For the general aviation rule, we have said that if they have incurred costs up to one-third of the cost of inventory, they would get the investment tax credit.

It was not designed to help the buyer. It was designed to help the small manufacturer of airplanes.

Mr. METZENBAUM. But, in connection with the commercial aircraft, there were not normally binding contracts that were already existing at the time the conference committee was meeting.

Mr. PACKWOOD. I thought I mentioned that. The difference in the method of operation is in cases where the purchase is of a 747 or DC-10's or planes of that type, manufacturers normally do not manufacture the planes until they have an option or order, because you have a whale of a lot of money tied up in just one plane. But, in general aviation, it is more common to have some in inventory, closer to the way you manufacture cars than the way you manufacture a 747. So some planes are in inventory. They have some in showrooms, if you want to call them that; some that are partially constructed. So we did not apply the binding contract rule to general aviation that we applied for major aircraft, where you only build the plane if you got an order.

Mr. METZENBAUM. Would the manager agree that this is, indeed, not a transition rule but that this is apparently, according to his description, an action taken in order to help an ailing industry?

Mr. PACKWOOD. I think that is a fair statement, although it is a transition rule in the sense that it terminates. The order has to be submitted by the end of this year and the plane has to be delivered by the first of July next year, or you are out. So, in that sense, it is a transition rule. It is not a permanent exemption from the law.

Mr. METZENBAUM. Transition rules, by definition, are that they apply to somebody who has taken action under the old law and would be unfair to change the rules on them in midstream. That is not this kind of a case.

Mr. PACKWOOD. That is fair to say.

Mr. METZENBAUM. Would the chairman be willing to explain why he then selected manufacturers in Kansas, Florida, Georgia, and Texas, and excluded Arkansas and Delaware? I do not know whether there may be some other airplane manufacturers around the country. What are the companies that gain the advantages of this?

Mr. PACKWOOD. I cannot tell you which companies. I do not know the names of the companies. When we put the rule in we were told it was all the domestic manufacturers. Subsequently, one of the Senators from Arkansas has told me about their problem with the Falcon jet, which is a plane that is partially manufactured in France and brought to Arkansas for further assembly. The person that put forth this request for the rule was trying to cover all planes that are fully domestically manufactured and I assumed this covered the domestically manufactured planes. I have not yet heard from any of the Senators from Delaware about any problems in Delaware.

Mr. METZENBAUM. I will not press the point further. I think it is a good example of what happens when we try to make nongeneric tax laws and try to couch them in language to take care of some but not necessarily all. I will not belabor the point further. I will go on to some other subject.

On page 75, a Drexel Burnham office building and on page 81 a Morgan Guaranty Trust Co. Wall Street Building, each specific special treatment, at a total cost of $52 million.

Now, I must confess that $52 million is still a lot of money. It would pay for a lot of programs that are being cut back and phased out during these tight budgetary times.

No one needs to convince the distinguished chairman of the Finance Committee, who is extremely knowledgeable about matters such as this, that Drexel Burnham has been one of the most successfully operated companies in the country. I bear them no malice. In fact, I feel kind of a friendly relationship toward them. And Morgan Guaranty Trust Co. is also an equally strong corporate factor in the investment banking industry.

I have difficulty in understand what kind of motivation would cause the chairman of the Finance Committee or the chairman of the Ways and Means Committee to give $52 million to these two companies. I cannot see any public interest being served. I feel absolutely certain that with or without that special tax incentive those buildings would go forward.

We both know that there are many single deals where these companies make $52 million on one deal. This is $52 million for the two of them.

But for $50 million, we could provide shelters and support services for 2 million runaway youths. For $50 million, we could do more in providing rehabilitation centers and drug treatment centers for those who are drug addicted. And although I did not get a chance to read the full story today, I did read enough of it to indicate drug treatment programs in this community and throughout the Nation.

And so $52 million is but a pittance to Drexel Burnham and Morgan Guaranty and maybe, under certain circumstances, they might be entitled to it. But it is this kind of thing that makes it so difficult for the public to comprehend why did we do this for these two corporations—or maybe they are partnerships.

We are aware of the fact that just a moment ago you explained that you were doing something for the small aircraft industry because they were hurting. Now we have two partnerships or corporations that far from hurting are barreling in the profits at an unprecedented rate. I think Drexel Burnham—I think I saw an article about them recently—that they have progressed more rapidly and further than almost any other firm on Wall Street.

So why give them $52 million?

I yield up to 3 minutes to the distinguished chairman of the Finance Committee.

Mr. PACKWOOD. As I told the Senator from Ohio earlier, we had worked out an agreement with the House that, so long as basic principles—passive income, book income, minimum tax—were not violated, they could put in what transition rules they wanted and pay for them out of the portion of money allocated to the House.

These were both rules put in by the House. Although I can answer as to Morgan Guaranty. It was about 8,500 jobs involved in New York. I believe this request came from Congressman RANGEL, but I would not swear to it. It involved about 8,500 jobs involved in New York. Morgan Guaranty was going to move out. This was an effort to keep the jobs in the State.

□ 1350

Mr. METZENBAUM. I have to say, and I appreciate the answer of the chairman and I recognize that he is responding on the basis of that which somebody else has said. I respect that. We do that around here often. It is not an unusual procedure. I say that those companies that spent all of their time threatening to move out and move, do this, do that, if somebody does not give them a tax break, if somebody does not give them some special industrial revenue bond right, or some other special right, I am not sure that they ought to be embarrassed about it or we ought to be embarrassed about the fact that we are going along with it. I will go on.

On page 148, section 406 has been added to the bill. It is entitled "Retention on Capital Gains Treatment for Sales of Dairy Cattle Under Milk Production Termination Program."

It was neither in the House nor Senate bill. It cost $22 million. And according to the transition list released yesterday, it helps persons or corporations in California and Oklahoma.

I think we have a right to know. Who are those persons? What do they have going for them? Are they small family farmers? Are they large corporations? More importantly, maybe, are they American owned? Are they foreign corporations? Are they foreign-owned corporations? Where did it come from, and how does it fit within the scope of the conference?

Mr. PACKWOOD. Again, it came from the House. The same answer as before: This was offered by the House in the conference. They offered to pay for it out of the money allocated for their portion of the transition rules. This is a genuine transition rule, the whole herd buyout program. Maybe Senators are interested in it. But it was not offered by the Senate side. We accepted it from the House.

Mr. METZENBAUM. The chairman says it was a genuine transition rule? Whom does it benefit?

Mr. PACKWOOD. Again, I have no idea who the individual or corporate beneficiaries are.

Mr. METZENBAUM. Let me read the explanation.

The amendments made by subtitles A and D of title III shall not apply to any gain from the sale of dairy cattle under a valid contract with the United States Department of Agriculture under the Milk Production Termination Program to the extent such gain is properly taken into account under the taxpayer's method of accounting after—

Not before, after—

January 1, 1987 and before September 1, 1987.

What special kind of treatment do we give to have them given special treatment with respect to capital gains? We do not know who they are. This is the point that I made to my distinguished colleague earlier today. It is the secrecy. It is the shrouding in a capsule of gauze behind which you cannot see. Who gets this? Why do they get it? And I would ask the chairman of the committee if before we can vote on this bill today at 4 o'clock, before my time expires, whether or not he would not have his staff see if the information cannot be obtained. It certainly seems to me if we are going to do something for somebody, we at least ought to know for whom we are doing it and why we are doing it.

Mr. PACKWOOD. In all deference to the Senator, I do not think I am going to do that. I asked my staff earlier if we could have from the Senator the list he was interested in. He would not give it to us. So I am answering his questions blank without any advance notice from the Senator or his staff at all. Had the Senator been willing to give us the information we wanted, we would have found out.

Mr. METZENBAUM. Under those circumstances, Mr. President, I did not understand that was the problem. I want to accommodate his ability to make available to me all of the information which is available. I will therefore provide him with a list of additional questions and we will be very happy to come back to ask those questions of him at a later point in the day.

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

Mr. KERRY. Will the Senator withhold his request?

Mr. METZENBAUM. I do.

The PRESIDING OFFICER. Who yields his time?

Mr. KERRY. Mr. President, I ask unanimous consent that I be granted 10 minutes from the time of the Senator from Louisiana if I may.

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

Mr. KERRY. Mr. President, comprehensive tax reform—the pursuit of a fairer and more efficient income tax levy—has been a central theme in the American agenda for many years. Over the past decade, as the Federal Income Tax Code became ever more twisted, marginal rates grew more and more burdensome on our people, the importance of that goal increased as the hope that it would ever be achieved diminished.

And now, after years of work, the moment of choice is upon us. Like a cat with nine lives, this bill we have before us today has survived a tortuous path to this peak. Mr. President, this bill has survived many deaths and is here today for one reason—because this country needs a change in our current code. We need it because the current Tax Code has become for too many of our people a symbol of their worst fears about Government. It is awkward and burdensome, it is arbitrary and inconsistent. It is, Mr. President, a mess.

Tax reform is here being debated in the Senate today because we cannot allow this situation to continue.

This bill will provide the basis for the American people to move once again to trust their Federal Government. This may seem a grand claim for a tax bill, but it is a simple fact that for many Americans the most direct, most personal, and certainly the most expensive contact they have with their Government comes on April 15, when they pay their income taxes.

Most Americans are, I believe, willing to pay their fair share of taxes in the spirit of Oliver Wendell Holmes, who said, "Taxes are the price we pay for a civilized society." It is the unfortunate case, however, that our Federal Tax Code has become such an object of derision today that most Americans have come to identify more closely with the old saying which goes something like this: "An honest man is one without opportunities to steal." The fact is, Mr. President, that under the current system, avoiding taxes has become a sadly accepted way of life for many, leaving a wake of cynicism and frustration in their path.

Ordinary citizens—those people without the use of high paid lawyers and fancy tax shelters have had to witness a parade of newspaper headlines heralding the 50 profitable corporations that paid no taxes, and the hundreds of millionaires who paid no Federal income taxes.

This proposal will make that kind of unfairness a thing of the past. This bill closes down unfair tax shelters. It imposes a tough minimum tax for all profitable corporations and individuals with real income. And, at the same time, it offers significant relief to those who have been forced to carry an unfair burden while the rest have gone free. It lowers marginal tax rates significantly. It increases the standard deduction, the personal exemption, and the earned income tax credit, and it removes some 6 million of America's working poor from the Federal income tax rolls entirely.

But while this bill makes major and important changes, it is not perfect. No bill—least of all a tax bill—is perfect, and this one—the product of historic process of compromise and negotiation—is not different. This bill is not as fair as it could be, and makes changes that in my view, may have an adverse effect on our Nation's economy. While I support the bill for the improvements it makes, I feel compelled to address the problems it raises, and to pledge my support for future and immediate efforts to deal with these problems. I view this bill as an effort to clean the slate and begin again the process of formulating a better tax and overall economic strategy. It is in my mind a beginning and not an end. I hope my colleagues will remain committed to making the improvements that are needed upon passage of this legislation. And the improvements are many.

Mr. President, I was one of a near majority of Senators supported an amendment to the Senate bill that would have restored the full $2,000 deduction for individual retirement account contributions, as the House bill did. It is my relief the IRA has encouraged Americans of all income groups to plan for their future security in retirement. At the same time, it is a valuable savings incentive that is desperately needed because our national savings rate has fallen dangerously low, hampering our international competi-

tiveness and increasing the cost of capital. Unfortunately, the conference report eliminates IRA's for many Americans.

Similarly, a controversial provision in the Senate bill eliminated the 3-year recovery rule for State, Federal, and local government pensioners. This change unfairly singles out one group in society, represents a substantial tax increase, and will threaten the financial security of many retirees. But the conference agreement now takes this bad provision of the Senate tax bill and makes it worse by applying the change retroactively. Many individuals had hoped that the prospective date in the Senate bill would at least have provided them with the option of early retirement to avoid the added cost of the new rule. I find the use of retroactive changes—here and throughout the bill—to be a violation of the most basic principal of fairness.

I am also gravely concerned about the increased floor on the deductibility of medical expenses. The impact of this change on those unfortunate individuals and families among us who must bear extraordinary medical and hospital expenses will be painful, and is in my view is callous and unfair.

Another change that I believe is both unfair and unwise is the limitation on the deductibility of interest on student loans. Again, this change is applied retroactively—changing the rules of the game is never fair, but it is particularly contemptuous when the victims of the changes are recent graduates with small incomes and substantial expenses and have come from poor and working class families without the means to finance higher education without loans. As if this weren't bad enough, the conference agreement retains the loophole that allows owners of real property to use home equity to create tax-deductible student loans.

What makes these changes unwise as well as unfair is that they will add sharply to the cost of higher education and deny many gifted and able students the opportunity to achieve their potential and make their greatest contributions to our society. These student loan problems, which were debated on the floor of the Senate more than 2 months ago, could easily have been fixed in conference. It is shameful that they were not addressed, and this is one of the first issues that we will have to correct next year.

Finally, there are a number of types of income—such as workers compensation payments and student fellowships—that will be subject to Federal income taxes for the first time. It seems to me counterproductive for Government to, at one moment, encourage private charities and public institutions to make such funds available and then turn around and tax such financial support.

Stepping back from specific provisions of this kind to take a broader view, I see still more about the conference agreement that troubles me.

I am troubled by the fact that the bill abandons our traditional commitment to a progressive rate structure in the Tax Code. When added to the burden of payroll taxes, the two rates in this bill create what comes close to a flat tax rate for all Americans, with effective tax rates that actually decline as income rises into the range of the wealthy.

The two-rate system is touted for it's simplicity, but simplicity is nothing but a trojan horse for inequity. There is nothing about two rates that makes it any simpler for taxpayers to figure what they owe. They still have to go through innumerable steps to arrive at adjusted gross income—and once there, they still will have to find their adjusted gross income on a table to figure their taxes owed—a table that just as easily could account for additional rates.

There is no reason why a truly progressive, three- or four-rate system could have been applied. This would have made the tax bill a lot better in my view, which is why I supported the amendment offered by my distinguished colleague, Senator MITCHELL, in June and why I believe we should in the future consider proposals to extend the "transitional rate structure" the agreement applies in 1987.

Another serious concern is the way in which the new Tax Code discriminates against those who rent their houses or apartments rather than own them. This tax bill continues the Tax Code's longstanding commitment to promoting homeownership—even to the extent of allowing unlimited mortgage interest deductions for second homes, up to the cost of the home.

Yet the tax benefits afforded to the renter—indirectly through property owners—are being sharply curtailed. The effect, I fear, could be a lower supply of rental housing—especially for low- and moderate-income families, and 5- or 10-percent rent increases for all renters.

Mr. President, throughout the entire debate on the tax bill there was no single issue that consumed me more then the impact of this legislation on renters and rental housing costs. I spoke with Chairman PACKWOOD and other members of the committee, and was a cosponsor, with Senator MITCHELL, of an amendment that was approved on June 24, which addressed this concern.

I have also worked, in cooperation with a coalition of legislators from both the House and the Senate, to see that the final conference agreement contained several transition rules which limit the certain dislocation that will result from the retroactive application of passive loss provisions. While I am pleased that the conference committee agreed to provide the relief these rules allow, I am concerned about the prospective impact of the tax bill on the construction of rental housing.

I also believe the repeated use of retroactive changes in tax law contained in this bill constitute a clear case of the Government breaking faith with investors. This sets a dangerous precedent, which I hope will never be repeated. When people invested in low-income housing and a number of other desirable activities, as the Tax Code had clearly and purposely encouraged them to do, they were an instrument of public policy serving the national interest. If the Congress decides to change the rules for the future, that is fair game. But when Congress changes the rules in midplay, a fundamental notion of fairness is violated. As I stated during the debate on the bill in June, I oppose retroactive changes in the strongest possible terms.

The effect of changes in the tax shelter rules on low-income housing is symbolic of a major policy decision embodied in this bill: It represents a decision that the Tax Code is not the appropriate vehicle for subsidizing a whole range of activities that society has deemed worthy and previously chosen to encourage through the Tax Code. This decision will impose a new burden on the outlay side of the Federal budget. There is no question in my mind, Mr. President, that next year, and for years thereafter, we will see the consequences of this decision in greater demands for housing, for education, for research and development, and for a host of other activities that will require increased Federal support.

Again, looking at the broader impacts of the tax bill, I share with many of my colleagues the concern that the plan not only fails to address the central economic problem facing the country: the Federal budget deficit, but also makes matters much worse. The tax bill exacerbates the deficit problem in two ways.

First, the tax bill makes the deficit worse because it provides a temporary revenue increase of $11 billion in fiscal year 1987. This increase is followed, however, by $34 billion in revenue shortfalls over the next year. As a result, it will be even more difficult for the Congress to meet the deficit reduction targets contained in the Gramm-Rudman-Hollings law.

The second way in which the tax bill stiffles our ability to close the budget deficit is that it makes it impossible to increase revenues without a broad-based tax rate increase. It does this because it takes billions of dollars raised from tax compliance, loophole closing, and the imposition of an alternative minimum tax, and uses these funds

not to reduce the deficit—as we could have done—but to cut the tax rates of every American, no matter how high his or her income.

One of the biggest mistakes made by the tax-writing committees when they took up President Reagan's challenge to reform the Tax Code was accepting his condition of revenue neutrality. It is a myth that the only way to raise revenue is through tax increase. As Governor Dukakis has shown with the successful Revenue Enforcement and Protection Program [REAP] in Massachusetts, there is an enormous potential for new revenues from better enforcement of tax laws, and through closing loopholes that allow individuals and corporations to pay less than their fair share. These measures are not new taxes, and they do raise revenue.

One of the most controversial questions about this tax bill is its impact on the economy, and on the international competitiveness of U.S. industry. I am deeply troubled by the possibility that this bill will hurt the economy. The timing of this measure—coming at the tail end of a weak recovery, at a time when the farm, energy, banking, and manufacturing sectors of our economy are all experiencing severe strains—is very bad. But I have listened to the advice of some of the leading economists in this country, and while there are dissenters, the most convincing arguments that I have heard predict that the long-term efficiency gains from this tax bill will exceed the loss from transition shock. In any event, I believe that this Congress should stand ready to correct any mistakes in this bill as soon as they become apparent. Our economic growth and capital formation incentives are one area of this kind where we will have to be particularly attentive.

Despite these reservations with the tax bill, I recognize the extraordinary amount of genuine tax reform it contains, and support it because of the substantial improvements it represents when compared to current law.

Without question, the most important change established by the tax reform bill is a dramatic improvement in horizontal equity. Under this bill, taxpayers can have a greater assurance than ever before that what they pay in taxes is fair and proportionate to what others with similar economic income will have to pay. This is because the bill imposes—for the first time—a truly meaningful alternative minimum tax for corporations and wealthy individuals, because of the passive loss rule limiting the use of tax shelters, and because of limitations on other abusive practices.

The bill also closes down a range of other loopholes that benefit major corporations, such as the much abused completed cost method of accounting, which has caused so much cynicism on the part of ordinary taxpayers who read with horror the news accounts of multibillion-dollar Government contracts going to companies that paid not a penny in Federal taxes.

Another part of the bill that deserves special attention is the area of tax enforcement and administration. On May 8, 1985, during the debate on the budget resolution, I offered, and the Senate approved, an amendment calling for a vastly increased commitment to the enforcement of Federal tax law, and a reduction in the $105 billion annual tax gap—the money owed to the Government but not paid. Following that amendment being approved by a vote of 92 to 3, I filed a bill, S 1152 that suggested many of the ways that the tax gap could be reduced. S. 1152 was referred to the Finance Committee, and several of it's key provisions were included in the Senate tax reform bill. While not all of these proposals were retained in the conference agreement, several of the more important changes were maintained. For example, new reporting requirement for real estate capital gains are contained in this bill. So too are new tax shelter limits, increased penalties for failure to pay taxes, for negligence, fraud, and understatement of tax liability. These changes are an important part of the movement for a fairer system of taxation.

In terms of "vertical equity"—the fairness of the bill when one compares how it treats those at the bottom of the income scale with those at the top—the bill is less than it should be. But make no mistake about it—it represents a definite improvement over current law.

By closing loopholes, eliminating tax shelters and imposing tough minimum tax rules, this tax bill broadens the tax base significantly, and allows for the reduction of marginal tax rates. Under the new rates contained in this bill, 80 percent of American households will be taxed at the low rate of 15 percent. Lower rates not only mean lower taxes for the millions of honest Americans who have not benefited from tax shelters and other avoidance schemes—they also eliminate the distortion of incentive that results from high rates.

The bill increases the zero bracket amount, the personal exemptions, and the earned income tax credit. As a result, the bill takes 6 million low-income individuals off the tax rolls. This is perhaps the most frequently touted virtue of the package, and it should be—for when was the last time we in this Congress had the chance to vote to give benefits to the poor rather than vote to cut them back?

According to the Children's Defense Fund, "a family of four struggling to maintain its independence and self-sufficiency on poverty-level wages; for example, will have over $1,000 in additional income in 1988 as a result of the changes in the Tax Code contained in H.R. 3838." After a 5-year period when the poor have seen both the assistance programs and the safety net they depend on cut to shreds by budget cuts, I find this reform profoundly important.

At the same time that this tax bill broadens the base, lowers tax rates, and removes 6 million of our poor from the income tax rolls, it retains the most popular and widely used deductions: it retains the deduction for home mortgage interest, for charitable contributions, and—significantly, for State and local income and property taxes.

These changes have long been sought by public interest groups and reformers—and have long seemed hopelessly out of reach because of the power of well financed special interests to defeat change.

So, Mr. President, the choice is a difficult one. The bill has its strength, and it has its weaknesses. As Senator DANFORTH noted in his statement yesterday, no tax bill is all good or all bad. This bill, like any bill, is shades of gray. And the choice that we face is whether the benefits of the bill exceed its costs.

Mr. President, I wish there were a different choice available to us today. I wish that we could choose among the various parts of the bill. But we cannot. The choice is simple: it is this bill, or back to business as usual.

I have decided, after extensive deliberation, that the historic opportunity represented by this tax bill deserves my support. To fail to support this bill, Mr. President, is to forsake the hope that we will ever again be able to rally the broad consensus necessary to overcome the special interests, and begin the process of instituting genuine tax reform.

Mr. President, there has been a great deal of debate as there ought to be about a bill of this importance. I think most of my colleagues laid out extremely effectively the very many pluses, and the many potential negatives of this particular piece of legislation. It is not my intention to take the Senate's time of going through each and every one of them. They are a matter of record. I am sure I am not going to differ from those many of my colleagues.

I would like to make a few general comments if I may, about how I arrived at my particular position because I have found this a very difficult decision. I have thought and listened to the eloquent comments of the Senator from Missouri, and the very heartfelt concerns that he has and to the many others who opposed this piece of legislation who have concerns.

I think from a personal level there are many reasons to conclude that it would perhaps be an easier political vote to vote "no" than to vote "yes" in many ways, notwithstanding the degree to which people say this is an historic piece of legislation. It is always simpler, I suppose, to explain now, and hedge future repercussions. I have decided, however, despite very serious concerns that remain to vote in favor of this bill with an understanding that I do so with the perspective that this bill is not an end, but it is a beginning, that this bill merely puts us in a place where we know we have an obligation to begin to make up for what are serious inequities and for what are potential serious negative effects on the economy as a whole.

The reason that I have come to that balance, and the balancing act of weighing the plusses and minuses, is that I think the tortuous path that this bill itself has gone through, perhaps the nine lives this bill has had, is evidence of how difficult it really is to get real tax reform. And in the final analysis, though I may feel that there are retroactive provisions that are unfair, and I think they are, and I think everyone agrees, although there may be down sides in terms of competitiveness and investment, capital formation and housing, this is an opportunity to in a sense create tabula rasa, to clean the slate, to begin where we know there is an enormous political momentum to begin which is to get rid of the shelters, get rid of the loopholes, clean up the process by which Americans come to feel they cannot have faith in the tax system, and renew the effort then to adjust where we have to adjust.

So I am voting for it not because I think it is a perfect bill. I do not think there is any such thing, obviously, as a perfect bill, but because I believe it is so important to seize this opportunity for reform. And the most important thing that this bill does is to get rid of that sense of inequity that people have had about the broad tax system as a whole, which has given credence, I think, to a lot of people's belief that the system symbolizes the old adage that an honest man is one without opportunity to steal.

The past tax structure has given people opportunities and has encouraged people to take opportunities to enhance their positions by virtue of the unfairness that we have built into the tax structure.

So I think that the horizontal equity, the fact that people earning similar incomes in America will pay similar amounts of taxes, an important principle though I regret that principle is being asserted to such a degree that it excludes any of the other principles we have always adhered to about more variation or progressivity, if you will, of the amounts that people pay as they earn more money.

□ 1300

In addition to that, it closes the loopholes and shelters and it keeps much that is good in our tax structure, such as the standard deduction, personal exemption, the earned income tax credit, and I think finally the home mortgage interest rate deduction.

I want to make it clear, Mr. President, that I think the fears of the downside are real, and that I hope the Senate is in concurrence in its understanding that we are going to have to be back here next year to make one of two decisions: Either to adjust it for these inequities through the Tax Code itself, or, if we have made a decision that we are really not going to use the Tax Code for any accomplishment of social goals, that we are willing to spend the money where necessary whether it is for a housing subsidy or for education loans or for the many needs which have been articulated by the distinguished Senator from Ohio.

Moreover, Mr. President, I want to underscore that this is a most critical time in the history of this country in our competitive posture.

We are slipping rapidly as measured against the industrial capacity of other countries. Unless we have the ability to be able to invest capital into new plants and equipment, into new technologies, into research and development, into the renewal of our educational institutions and our laboratories, our ability to be able to participate as we have in the past as the dominant trading partner within the new marketplace is going to slide even further than it has.

I believe this bill does not address those issues as it ought to or as I would perhaps like it to. I hope this Senate will be absolutely committed at the beginning of next year to make certain that whether through fiscal policy or through our expenditures or tax policy we are going to undertake to do that.

Mr. President, I would simply say in closing that while, again, there is much that one could complain about, particularly the retroactivity, which I think runs against the very grain of fairness on which we have built this country, there is much also that we can look to in this bill to set us on a course of tax policy in which people can once again have faith and where we can perhaps even diminish the current willingness of Americans to feel that it is almost a responsibility on their part to find ways not to pay taxes rather than to participate.

I think in that sense this bill is historic and that is the principal reason why I vote for it, but with very, very deep reservations, which I again reiterate I feel are imperative that we address at the earliest possible moment. I yield back whatever time I have remaining.

Mr. PACKWOOD. Mr. President, I yield 3 minutes to the Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I commend the Senator from Oregon [Mr. PACKWOOD] and the members and staff of the Senate Finance Committee and Joint Committee on Taxation for the bill which the Senate presently has before it.

This is one of the most fundamental pieces of tax reform legislation since passage of the Internal Revenue Code of 1954.

The beauty of the bill is that it is a historic shift in tax philosophy that seeks to base taxes on income rather than Federal social and economic policy objectives. That is, if you make such and such income you pay a tax.

The goals are worthy and the task massive:

Simplicity: To reduce the need for individuals to use sophisticated financial arrangements to minimize tax liability.

Fairness: To ensure that persons with similar incomes pay similar tax.

Efficiency: To encourage businesses to make decisions on economic merit rather than tax considerations.

To refer to selected provisions:

Rates and brackets: Top individual rates reduced from 50 percent to 15 percent and 28 percent. In 1987, transition period with five individual rates of 11, 15, 28, 35, and 38.5 percent. In 1988 when new individual tax rates fully effective, 15 and 28 percent. The 28 percent applies to taxable income above $17,850 for single taxpayers, $29,750 for married taxpayers, and $25,288 for single heads of household. All brackets adjusted for inflation in 1989.

Personal exemption: Phased-in increase from present $1,080 to $2,000 in 1989. In 1990 indexed for inflation.

Standard deduction: Increased to $3,000 for single taxpayers, $5,000 for married couples, and $4,400 for single heads of household. Effective January 1, 1988. Adjusted for inflation.

Income averaging: Repealed.

State and local taxes: Repealed.

Consumer credit card and car loan interest: Repealed. Phased-in over a 5-year time period.

Capital gains: Repealed.

Home mortgage interest: Fully deductible.

Medical costs: Deductible if they exceed 7.5 percent of adjusted gross income.

Charitable contributions: Deductible only for itemizers.

Unemployment: Benefits taxable only if they and other income exceed $12,000.

Individual retirement accounts: Taxpayers not under a pension plan can

deduct up to $2,000. Both husband and wife ineligible if either is covered by a pension plan. Married couples under an adjusted gross income of $40,000 or $25,000 for a single person, can get up to full $2,000 deduction even if covered by a pension plan. Partial deductions allowed in certain circumstances.

Minimum tax: Individual minimum rate is 21 percent.

Investment tax credit: Repealed as of January 1, 1986.

Corporate tax rates: Reduced to 34 from 46 percent.

To present a few observations regarding this legislation:

It is tax reform, not necessarily "tax relief." Overall, the tax break benefits are modest. For most, $2.50 to $8 a week in 1988. Overall the average individual income tax cut is 6 percent over a 5-year period.

"Revenue neutral" over a 5-year period.

It will create a positive long-term restructuring of the economy. Short-term adjustments by taxpayers will be needed.

A major first step toward addressing widespread inequity in the tax system. It doesn't eliminate it—in fact, it may have even caused some.

We need greater Tax Code stability. People need to know not only what the rules are but also feel confident that they will not be changed against them. Therefore, I urge in the future; prospective changes in tax reform.

Touches all aspects of our economy. Its early results may produce unforeseen and unintended effects. More tax law adjustments may be needed next year.

Concerning the bill's influence on the economy:

Disagreements exist among the experts but there is good reason to believe that the short-term economic effects of the tax plan could be modestly negative; the long-term effects should be generally positive.

It will not significantly affect interest rates, inflation, and economic growth.

It should stimulate the bond market and stock trading, but not the stock market.

Initial huge decreases in construction and business investment are expected.

Slight consumer spending increases may occur.

The following are my primary concerns:

Various retroactive features which penalize those investors who have made long-term commitments in reliance with current law.

We will not have a full IRA deduction program which encourages those to save for their retirement and generates new capital for investment in this country. Will those who qualify for IRA deductions be able to afford it?

Certain sectors of the economy may experience undue hardship, especially in real estate, education, and certain charitable organizations.

It may create short-term cash-flow problems for small businesses.

Not enough benefits were given to middle-income taxpayers and too much to the rich.

That a financial package such as this, where so much time, energy, and attention has been given, does not address the real economic concerns of this country—greater productivity, the trade imbalance, the national debt, new equity investment capital, and the deficit. Basically, I'd like to see a financial package that significantly stimulates the economy.

The general ambivalence and silence that is shared by the American public. The perception of the public needs to be more positive.

Mr. President, this is a positive first step down a long hard road to tax reform. It is the beginning, not the end, of tax reform.

For most taxpayers, the tax rate cuts and increased exemptions will more than offset the loss of deductions.

Creates greater uniformity of tax burdens among businesses and among sectors of the economy.

Virtually eliminates tax shelters, closes dozens of loopholes, slashes tax rates, and removes 6 million from tax rolls.

Tax burden on the working poor reduced; the rich will find taxes harder to dodge; and people with like incomes will generally pay like taxes.

Raises corporate income taxes in the aggregate by $120.4 billion to pay for cuts in individual income taxes of like amount.

Creates new minimum tax provisions that eliminate or restrict the use of tax breaks that companies have been able to use to reduce their tax liability.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, I would like to address myself for 1 minute to the manager of the bill.

I have a number of other questions. I made those questions available to his staff. I will advise his staff that I am prepared to explore each of the subjects with the manager even if we cannot do them all seriatim at the same time.

As soon as the manager is ready to proceed with respect to any one or all of the questions, I am prepared to move forward.

Mr. President, I just wanted to present that statement. I do not want to keep asking, but I would hope that we can at least take up one and then 10 minutes later come back and take up another one.

Mr. PACKWOOD. Mr. President, it would have been helpful if we had had this list much earlier, 3 or 4 hours earlier. I have one person in charge of transition rules and she is out talking with the aide of another Senator at this time. She is the one I would rely upon.

Yes, we can take one and then take 15 minutes off while we look at another one. How many did the Senator give us?

Mr. METZENBAUM. About 8 or 9.

Mr. PACKWOOD. At the moment my aide is not here. When she returns, we will see how far she has gone.

Mr. METZENBAUM. We are trying to deal with 400 of them in a day and a half. It is not easy, but I think the information is available somewhere. I would hope we would not waste this time. I am prepared to proceed.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand there was a procedure worked out last night concerning the reservation of time. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

□ 1310

Mr. LEAHY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. Off whose time?

Mr. LEAHY. Off the time of the Senator from Louisiana.

Mr. LONG. Mr. President, I yield the Senator 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. LEAHY. I thank the Senator from Louisiana and thank the Chair.

Mr. President, I shall support this tax bill. I am reminded that last year, the equivalent of one-fifth of all the taxes paid by hardworking Vermonters was used to write a check for a $104-million tax refund, a tax refund to a defense contractor who earned $1.6 billion in profits. That company earned $1.6 billion in profit, paid no taxes at all, and still was able to get over $100 million in a refund.

I think that is the kind of injustice that prompted Congress to act. I congratulate the President for pushing for tax reform. There are a number of provisions of this bill, which are beneficial, which are endorsed by both Re-

publicans and Democrats in this body. That spirit of bipartisanship should make all of us proud to vote for this bill.

The bill in a way is a good news/bad news bill. It is good news for the middle class, bad news for the special interests. It is a tax break for the middle class; it closes loopholes long needed closing for the special interests.

The major benefit of the tax reform bill is that it is going to cut taxes for the average Vermont family by $700. It will put an end to the policy of taxing Americans into poverty. No longer will Americans below the poverty line be taxed. By taking the tax off our poorer citizens, we will make work more attractive than welfare. This achievement is the result of our work with the other body and with President Reagan in the best sense of bipartisan cooperation.

One of the most significant reforms in the tax bill is the doubling of the personal exemption. The personal and dependents exemption was added to the Tax Code in 1948 to help families keep up with the cost of living. Since that time, the value of the exemption has fallen behind the costs of raising a family by 80 percent. It is time that this was corrected.

The tax reform bill will make our tax laws more fair for senior citizens. Under this bill, an elderly couple will be able to keep more of what they make before paying taxes on income.

All of these reforms are financed by slamming the door on tax shelters and by enacting a tough minimum tax to ensure that large, profitable corporations pay their fair share of taxes. Gone will be the days of the tax refund for billion-dollar corporations.

The final tax reform legislation also maintains the deduction for State and local income and property taxes. Earlier this year, the State and local deduction was in jeopardy. I organized a majority of Senate Democrats to oppose any limit on the State and local deduction—a deduction which was first added to the Tax Code 120 years ago by Justin Morrill of Vermont. The State and local deduction saves the average Vermonter more than $600.

In the future, the tax reform bill will also help farmers. The tough anti-tax shelter provisions will ensure that those who farm the land are doing so for legitimate economic and agricultural purposes and not only to gain tax advantages. The bill promotes dairy farming and discourages tax shelter farming.

This tax reform bill is not perfect. Nobody on the floor of the Senate could claim that it is perfect. There is probably no way on God's green Earth that the Senate, the House, and the White House could concur on a perfect tax bill or that we could ever find any three people in the country to concur on what is a perfect tax reform bill.

During Senate debate on the tax reform bill, I voted to maintain the full deduction for contributions to individual retirement accounts [IRA's]. The Senate rejected that amendment and instead decided to permit IRA deductions only for those without other pension arrangements. The tax reform conference agreement is an improvement, but does not go quite as far as I would like.

Mr. President, all of us are concerned about the effects of this radical legislation on the Nation's economy. It may be that tax changes made in the name of fairness and true tax reform will cause a drag. This is one Senator who is willing to say that Congress is not omniscient. If economic problems arise, I hope pride of authorship will not prevent Congress from acting quickly to prevent them.

As I have stated before, Mr. President, I am concerned about some of the retroactive aspects of the tax bill. Nevertheless, I urge the Senate to adopt this important measure. It is a giant step toward true tax reform.

SUBSTANTIAL EQUIVALENCE AT THE UNITED NATIONS

Mr. LEAHY. Mr. President, on Wednesday, the Senate adopted as section 602 of the Intelligence Authorization Act a measure offered as S. 1773 by the distinguished Senator from Maine [Mr. COHEN] and me in October 1985. That measure now goes to conference with the House Intelligence Committee. And I am reasonably confident it will emerge intact.

This provision establishes a national policy of numerical equivalence in the sizes of the United States and Soviet missions to the United Nations in New York. It provides a statutory foundation for actions directed by the President earlier this year to cut some 105 members from the Soviet delegation, and his order expelling 25 Soviet U.N. officials is consistent with the spirit and intent of this second Leahy-Cohen legislation aimed at reducing the Soviet intelligence presence in the United States.

It is because of that, Mr. President, and the reason I address myself to it, that I have been somewhat disturbed to read in the press that the Soviets have been pressing for a rescinding of the expulsion of the 25 Soviets, or for revising the names on the expulsion list, as part of a deal for freeing Nicholas Daniloff. Obviously, the administration would never agree to such a quid pro quo. Those 25 Soviets are known intelligence operatives, and Nicholas Daniloff is an innocent American journalist who was framed by the KGB.

In any event, Mr. President, I want to stress here on the floor of the Senate today that passage of the New Leahy-Cohen legislation—and its ultimate enactment by Congress and signature by the President—adds a new factor into the equation. Even when Nick Daniloff is free, which I hope for him and his family will be very soon, the policy of equivalence in the sizes of the two U.N. missions will remain on the books and will have to be implemented no matter what deals are worked out to get Mr. Daniloff back.

One fact is going to remain: Because of the legislation we have passed, there must be equivalence in those numbers. That means no matter what else, the Soviets are going to have to take an awful lot of their people back home.

So those 25 Soviet spies hidden in their U.N. delegation have to go, and they have to be followed by at least another 40 or 50 more to reach "substantial equivalence," as required by Leahy-Cohen when it is finally signed into law by the President.

Mr. President, this is not a case where somebody can say, "You have given us back Nicholas Daniloff, now you can send back those 25." It does not work that way. Those 25 have to go and worse news is coming: 40 or 50 more are going to have to go, no matter what arrangements are worked out in New York this weekend.

We have had problems with the State Department's attitude in implementing the first piece of Leahy-Cohen legislation, the law enacted last year requiring equivalence in the sizes of the United States and Soviet diplomatic and consular presences in each nation. The aim of that law is that over time State will reduce the number of Soviets with diplomatic immunity in this country, while increasing somewhat the number of Americans with diplomatic immunity in the Soviet Union. The end result should be rough equivalence.

State has chosen instead to try only to increase Americans and avoid any cutbacks of Soviet diplomats even though the FBI has stated publicly that a third or more of these diplomats are KGB agents. That is not the intent of the law, and this Senator wants to make clear right now his firm intention to return to the issue of implementation of Leahy-Cohen I next year as a priority item of business.

This is going to be implemented. It is on the books. It is not a matter of negotiations; it is not a matter of who saves face. It is the law and this Senator intends to make sure the law is upheld.

Mr. President, I ask unanimous consent to include in the RECORD at the end of my remarks a letter Senator COHEN and I sent Secretary of State Shultz about how accelerated implementation of the Leahy-Cohen diplomatic equivalence amendment might

be used as leverage in freeing Nicholas Daniloff.

Let me conclude by reaffirming that the final enactment of the second Leahy-Cohen law aimed at equivalence in the United States and Soviet U.N. missions puts these most recent reductions in a whole new light. There must be no confusion that we can back away from cutting the Soviet U.N. delegation down to rough equivalence or that the Daniloff issue can be used to back the United States away from strong action to get Soviet spying from the U.N. and its Embassy under control.

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

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, September 9, 1986.

HON. GEORGE SHULTZ,
Secretary of State,
Department of State,
Washington, DC.

DEAR MR. SECRETARY: We want first to emphasize our strong support for your effort to secure the immediate release of Nicholas Daniloff from Soviet custody. His arrest on trumped up charges of spying is an outrage and must be urgently resolved before it irretrievably damages U.S.-Soviet relations and disrupts the arms control talks now underway. If it continues to escalate, the Daniloff matter could jeopardize the chances for a Summit which could lead to a breakthrough toward a new arms reductions agreement.

As you know, last year Congress enacted and the President signed into law an amendment requiring the implementation of numerical equivalance between the sizes of the U.S. and Soviet diplomatic and consular presences in each other's country. We believe this requirement could be used to exert pressure on the Soviet Union to secure the release of Mr. Daniloff, and we urge your serious consideration of this approach.

At present, the Executive branch plans to implement the numerical equivalence requirement over an extended period of time, three years or more. We suggest you consider informing Soviet authorities that the implementation will commence immediately, and the pace and manner of implementation, including the proportion between reductions in Soviet diplomats here and increases of American diplomats in the Soviet Union, will be directly affected by Soviet actions regarding Mr. Daniloff. In other words, how quickly we reach equivalence and how many Soviet diplomats will be reduced will now be determined by how quickly the Soviet Union frees Mr. Daniloff.

Mr. Secretary, as after the KAL 007 tragedy, there will be strong demands in Congress for immediate, and perhaps extreme, measures against the Soviet Union. Such demands may even include disruption of the current talks in preparation for a Summit and for a new strategic arms reductions agreement. The suggestion we offer, if acted upon immediately, could defuse such pressures and prevent more serious damage to U.S.-Soviet relations, while increasing pressure on the Soviet Union to release Mr. Daniloff.

Be assured, Mr. Secretary, that we stand ready to do anything we can to be of assistance.

Sincerely,

WILLIAM S. COHEN,
PATRICK LEAHY.

Mr. COHEN. Mr. President, recently a high ranking Soviet Foreign Ministry official had the audacity to equate the Soviets' hostage taking of United States reporter Nicholas Daniloff with our Nation's legitimate effort to reduce the nest of spies residing in the Soviet mission to the United Nations. We must not and cannot tolerate this exercise in the Orwellian Computation of 2+2=5.

Specifically, Gennadi Gerasimov, spokesman for Soviet Foreign Minister Eduard Shevardnadze, told reporters, "In your eyes, Daniloff is the obstacle; in our eyes, this order—to expel 25 members of the Soviet U.N. mission—is the obstacle." He further threatened that if the President does not rescind his order that these 25 be expelled, "we are sure we are going to have some retaliation."

Having had one of our citizens fall victim to the Soviets' state-sponsored thuggery, we must not allow our Nation to be held hostage to the extortion tactics and threats of the Soviets as we undertake policies necessary to protect our national security.

The President's announcement of the expulsion order for the 25 so-called U.N. mission officials is a welcome and important first step in the effort to reduce the Soviet espionage threat in the United States. It is fully consistent with the legislation passed by the Senate Intelligence Committee last May and approved by the Senate just this week to reduce the size of the Soviet mission to the U.N.

That legislation, which Senator LEAHY and I sponsored and which has more than a quarter of the Senate as cosponsors, calls for essential equivalence in the sizes of the United States and Soviet U.N. missions. At present, the Soviets have well over 200 officials at their mission, more than double the size of the next two largest missions, those of the United States and the People's Republic of China.

The Soviets somehow claim to be outraged by the President's order that they reduce their mission's size to 218 by Wednesday of next week and to 170 by April 1988. Even when those actions are taken—even when their numbers are reduced to 170 2 years from now—they will still have fully a third more people in their mission than does the United States or the People's Republic of China, and far more than many other countries with extensive activities at the U.N.

I was told by a Soviet U.N. official earlier this year that the Soviets need all these people because of the many so-called peaceful initiatives they sponsor at the U.N. In fact, their activities are far less altruistic.

The FBI has estimated that, as with other Soviet organizations in the United States more than one-third of Soviet personnel at the U.N. mission are professional intelligence officers. As the Senate Select Committee on Intelligence, in its report on the Leahy-Cohen provision of the Fiscal Year 1987 Intelligence Authorization Act, stated:

> The chief damage of this large intelligence component is espionage and other clandestine collection by the Soviets of defense, science and technology, and national security information within the United States. Their large presence at the United Nations also provides the Soviets a great opportunity to attempt to recruit foreign officials at the United Nations as their agents.

Soviet defector Stanislav Levchenko, in an October 1, 1985, Washington Times article, clearly outlined the importance of the Leahy-Cohen legislation and of the action taken by the President which so offends the Soviets:

> The most practical means of disrupting KGB operations in America is to require parity in the number of Soviet diplomats in the United States and America diplomats in the Soviet Union, and to limit drastically the size and operations of the huge Soviet mission to the U.N. If such steps lead to a reduction of 100 or more Soviet offiicals, KGB activities in the United States would be seriously damaged. The KGB would lose many officers who otherwise would be handling active cases. But Moscow still would need to maintain contact with various offices of the U.S. Government. So more of the remaining officials would be occupied with legitimate diplomatic activities, rather than with espionage.

Both the diplomatic equivalence legislation the Senate passed last year and the U.N. mission equivalence legislation we approved this week, coupled with President Reagan's order that the Soviet U.N. mission be reduced in size, follow precisely the prescription laid out by Mr. Levchenko. They will have a salutary effect on the ability of the FBI to deal with the espionage threat represented by Soviet and Eastern bloc officials in this country.

What this entire situation demonstrates is the gravity of problems we face in our counterintelligence efforts. The Zakharov episode showed that each time we arrest a Soviet spy, an innocent American will pay the price. The most recent efforts of the Soviets to tie the Daniloff kidnaping to our legitimate efforts to reduce the Soviet espionage threat the U.N. reflects an even more pernicious and callous attitude on the part of the Soviets.

In the Daniloff case, the Soviets have scored a presummit public relations double whammy. They resolved a crisis of their own creation because of the humanitarian concerns, and they maneuvered the United States into appearing to treat the two cases—Daniloff and Zakharov—in the same way. Now they are going the further step of trying to tie the Daniloff case to important efforts which had been going on long before these most recent epi-

sodes to reduce a long-recognized espionage threat.

If the Soviet are allowed to get away with this brazen behavior, we can only expect further acts against our citizens and raise expectations that we will again bow to whatever demands they might choose to put forward.

The Soviets know that we place great value on even a single human life, and they know that we tend to have short memories. Our howls of outrage after, for example, the downing of KAL Flight 007 and the murder of Army Maj. Arthur Nicholson in East Germany in 1985 subsided quickly, yielding to business as usual. By permitting the Soviets to stonewall these acts of international barbarism, we contribute to the perception that the United States is too often unwilling to follow up our words with deeds. it is easy to see why the Soviets are finding our stern words about "next time * * *" to be empty indeed.

I recall a telling statement made about Soviet leader Gorbachev by one of his associates, who said, "He has a nice smile, but he has teeth of iron." Those teeth of iron turned into prison bars for Nicholas Daniloff, and they are removed only when the Soviets were able to piously insist that humanitarian concerns prompted them to release him from the KGB's custody.

This is rubbish, and it should be plainly noted as such. The Soviets have demonstrated themselves once again to be cynical, shrewd manipulators of power politics and public opinion. We now face a very tough task of refuting the perception that we have capitulated to their craven conduct. Rescinding the expulsion order for the 25 Soviet U.N. mission personnel is one thing the President must not do if he is to demonstrate clearly to the Soviets that we will not tolerate either the espionage techniques or their bullying tactics.

Mr. LEAHY. Mr. President, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER. The time remaining is 1 minute and 15 seconds.

Mr. LEAHY. I reserve the remainder of my time and yield the floor.

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

The PRESIDING OFFICER. On whose time?

Mr. LEAHY. On the time of the Senator from Louisiana.

Mr. LONG. Mr. President, I yield 6 minutes to the Senator from Montana [Mr. BAUCUS].

TAX REFORM ACT OF 1986—CONFERENCE REPORT

Mr. BAUCUS. Mr. President, millions of words have been spoken, and will be spoken, about this tax reform legislation.

It is a massive, landmark bill.

It will affect every business in America and every person in America.

And it will affect different people different ways.

Some are winners, some are losers.

But after thinking about it long and hard, I am going to vote for the conference report, for one simple reason.

With all its flaws, it creates a better tax system than the one we have today.

Any bill of this magnitude contains mistakes. I, for one, am particularly disappointed that the conference report deletes provisions important to agriculture and small business.

But the only fair way to consider this bill is to compare the overall tax system it would create with the overall tax system we have now.

THE GOALS OF REFORM

Any tax reform proposal has three goals: simplicity, fairness, and growth.

So how does this bill measure up?

The bill does achieve simplicity not for all but most Americans.

It takes at least 6 million people off the tax rolls altogether.

It cuts rates dramatically. Instead of 11 rate brackets, we'll have 2. The top rate will fall from 50 percent to 28 percent.

The standard deduction and personal exemption are increased dramatically.

As a result of these changes, the vast majority of all taxpayers will pay a flat rate of 15 percent.

In addition, the low rates will reduce the incentive to cheat or shelter.

The bill also eliminates some complicated deductions and exemptions, so that the average taxpayer will have an easier time filling out his tax return.

To be sure, the bill increases complexity in certain areas, such as the treatment of passive losses. And the new system will take some getting used to.

But on balance, I believe that the bill does simplify our tax system.

Our second goal was fairness:

The bill makes it more likely that people with the same income will pay the same tax.

And it reduces Federal taxes for most low- and middle-income families.

In Montana, the average taxpayer has an adjusted gross income of $17,000. A family of four earning that amount will get a 20-percent tax cut. Overall, Montanans' individual Federal taxes will decline by about 10 percent.

In addition, the bill contains a tight mininum tax and other provisions that will finally assure that every profitable corporation and wealthy individual pays its share of taxes.

Unfortunately, the bill also contains several provisions that are manifestly unfair.

For example, the repeal of income averaging. This is a gratutitous and unjustified slap at a group of people who have very volatile incomes—many of whom, like our farmers, are struggling to survive.

Another example is the new rules for Federal retirees. Whatever the merits of these rules, they should not be imposed retroactively.

However, on balance, I believe that the bill does make our tax system more fair than current law.

Our third goal was economic growth.

Here, the results are mixed.

The bill lowers taxes on individuals. That will put money in people's pockets. Yes, more in some than in others. But in any case, the tax cut will stimulate more spending.

And by eliminating many corporate preferences and lowering corporate rates, it will even out the corporate tax burden. To earn a profit, businesses will have to concentrate on building better products rather than better tax shelters.

In the long run, that should help make American companies more competitive internationally.

On the other hand, the bill increases the overall corporate tax burden. That, in turn, may increase the cost of capital.

Economists who have analyzed the bill disagree about its ultimate economic effect.

Some argue that the repeal of tax incentives will discourage investment.

However, others point out that the tax incentives we have provided in the past have not stimulated increased U.S. investment. Foreign competitors like Germany and Japan, which have higher corporate taxes than we do, also have higher rates of investment and productivity.

If we are honest about it, we should admit that the bill's ultimate economic effect is uncertain.

But uncertainty does not justify inaction.

We have to make decisions in life, many decisions. And we have to do the best we can with the information that we have.

This won't be the last tax reform bill. As our country evolves, we will be adjusting the Tax Code again to keep pace.

CONCLUSION

Looking at the three goals we set out to achieve, this bill falls far short of perfection.

It is a mixed bag.

It is not black or white.

It contains many shades of gray.

Its proponents overstate its benefits.

Its detractors overstate its liabilities.

But, on balance, I believe that this legislation creates a better tax system than we have today.

And it also does something more.

This tax reform bill, and the process by which it is being enacted, represents a triumph of the individual, average American over the larger special interests.

For years, the Washington cynics have said that tax reform could never pass, because too many vested interests have a stake in the existing, loophole-laden system.

This bill proves the cynics wrong. As a result, it will restore public confidence in our tax system and in our Government.

Mr. President, a vote against the conference report is a vote for the current, discredited system.

A vote in favor of the conference report is a vote for reform, with all its risks and imperfections.

I am reminded of what Franklin Roosevelt told an audience in Butte, MT, 52 years ago. "On one side is cynical and unsympathetic acceptance of things as they are. On the other side is our determination and faith in the possibility of change."

I, for one, will vote for the possibility of change.

TRIBUTE TO SENATOR LONG

Mr. President, I applaud Chairman PACKWOOD, Senator BRADLEY, and the other Finance Committee members who have worked hard to achieve tax reform.

But I pay special tribute to the senior Senator from Louisiana [Mr. LONG].

The last time we overhauled the Tax Code was 1954. Eisenhower was President, Joe DiMaggio was married to Marilyn Monroe, and RUSSELL LONG was serving his first term on the Senate Finance Committee.

Every tax bill since then has had Senator LONG's signature on it.

And that has been all to the good.

Through three decades, Senator LONG has had one of the toughest jobs in the country: Raising revenue to support the necessary functions of our Government.

He has discharged that responsibility with tact and with tenacity.

Edmund Burke said that "An ability to preserve, and a disposition to improve, taken together, would be my standard of a statesman."

As much as any person who has ever served in this Chamber, RUSSELL LONG meets that definition.

His leadership will be sorely missed.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the distinguished ranking manager of this bill would yield me 4 minutes and that Senator METZENBAUM would yield me 4 minutes.

The PRESIDING OFFICER. The Senator has 8 minutes.

Mr. ROCKEFELLER. Mr. President, the conference report on the tax bill may represent the most thorough overhaul of the Tax Code to occur in our lifetime. Unlike previous efforts at tax reform, this one is truly sweeping in scope. It is hard to think of a taxpayer or sector of our economy that will not be affected by it in some way.

In my view, this extraordinarily complex piece of legislation is far from perfect. It contains some policy decisions that I find regrettable; every Member of Congress undoubtedly opposes certain parts of it. Because of its magnitude, the legislation inevitably entails some risk. There is really no way for us to be certain of the bill's effects on the economy; without question, we will learn of problems that were not foreseen. I am concerned, as many are, by the possibility that the dislocations related to this bill will compound the troubles of an already-weak economy.

Overall, however, I believe that the bill's strengths clearly outweigh its shortcomings, and that the benefits—those that are certain and those that are probable—make the risks worth taking. I am persuaded that if particular changes are too abrupt, or have unintended effects, we can—and must—make adjustments in subsequent legislation. But we may never have another opportunity to achieve the genuine reforms in this measure if we do not act now.

We should not forget what has propelled this tax reform effort forward. Our current tax system is the object of well-justified public anger and cynicism. We do not have a system that treats people equitably; we do not have a system that requires the wealthy to pay a fair share. Over the years, the proliferation of special breaks has produced a code of outlandish complexity—and left the system wide open to manipulation. A massive industry of accountants and attorneys has grown up for this very reason: exploiting the Tax Code for the advantage of their clients. Far from making the wealthy to pay a fair share, the present system allows people with six-figure incomes to pay little or no tax—often proportionately less than families living close to the poverty line.

The principal purpose of this legislation is to improve equity—to remove numerous special breaks and privileges that cause the tax burdens of people with similar incomes and family circumstances to differ so greatly. Perceptions that the tax laws aren't fair have done much to destroy public confidence in the system—and are undermining the voluntary compliance on which that system depends.

There is a second major failing of the current system, and a second major reason for this legislation. Many of the provisions of the current Tax Code had well-intentioned social or economic purposes. But some of these tax expenditures have not necessarily benefited the economy, nor justified their cost in lost revenues.

The Code's erratic impact cannot be defended. Why should one major corporation face a tax rate of over 40 percent, while another profitable corporation collects refunds from the Government each year? We all know that too many investment decisions are being made because of tax consequences, not economic merit; we have all seen the half-empty office buildings that dot every major city, a testimonial to the misguided incentives of the 1981 tax bill.

Plainly, it will not be easy to reverse course and extricate the Tax Code from investment decisions, and I am not suggesting that this bill does a complete job of it. Nor will it be easy to move from one system to another; some dislocation is unavoidable. But I am convinced that the change of philosophy is necessary, that the legislation moves a long way in the right direction, and that the long-term impact of making the change will be positive for the economy.

Put simply, this legislation aims to treat taxpayers with similar incomes and similar family circumstances, alike. Until now, this goal has eluded the Congress, because of the great difficulty of curtailing numerous tax provisions which have benefited people—and corporations—over the years.

In my view, the most important provisions in the bill involve the restrictions on tax shelters and the repeal of the capital gains differential. Together, these changes substantially limit the ability of wealthy individuals to avoid paying taxes. Under the current system, tremendous energy is devoted to sheltering income or converting it into forms which receive tax advantages, like capital gains. Largely for these reasons, the graduated rate structure we have now is now progressive—despite 15 tax brackets and a top marginal rate of 50 percent.

It is fair to ask if the new rate structure is progressive enough. Under the bill, the top rate for the richest taxpayers is 28 percent, while the marginal tax rate in the income range just below them is 33 percent. I would prefer a system of three explicit rates, with the top marginal rate applied to those in the highest income brackets, and I voted for the Mitchell amendment when the Senate considered it.

I recognize that the low top rate is part of the complex bargain that made this tax reform legislation possible. If the top rate were higher, it would have been extremely difficult to eliminate the differential treatment of capital gains. Nevertheless, I still hope Congress will revisit this issue in the future. A great strength of this legislation is that it greatly reduces opportunities for wealthy people to avoid paying taxes. A great weakness of the legislation, however, is that it offers yet another tax cut to the wealthiest

Americans who have been paying taxes—those who have had their tax burden cut by enormous amounts during the Reagan years. Extending the top rate of 33 percent to the very highest income groups would produce a fairer Tax Code; it would also produce an additional $10 billion annually of badly needed revenue.

I think the majority of West Virginia taxpayers will come out ahead under the bill. Working and moderate-income people should benefit, especially if they haven't been itemizing deductions. Taxpayers who itemize are also likely to gain if their deductions are their mortgages and State and local income and property taxes. The bill should make a major difference to low-income families living at the poverty level, whose taxes have risen considerably in recent years. In addition to removing 6 million poverty-level families from the income tax rolls, the bill provides significant tax cuts to 5 million "working poor" families—enough to offset much of their payroll tax burden.

The antipoverty features of this bill should not be underrated. The economic policies of the Reagan administration have taken an exceptionally heavy toll on the poor. While the 1981 tax act gave huge tax cuts to wealthy people and corporations, families on the edge of poverty faced higher income and payroll taxes, along with substantial cuts in a variety of government benefits. Robert Greenstein of the Washington-based Center on Budget and Policy Priorities called the tax bill "more beneficial for low-income working families than any piece of legislation we have seen—or are likely to see again—for a number of years."

Altogether, roughly 80 percent of all taxpayers are expected to be in the 15 percent tax bracket under the new system, which should go to their advantage. In West Virginia, this percentage may be somewhat higher.

In general, the conference agreement—like the Senate version of the bill—makes more radical changes in the individual tax structure than it does on the business side. Overall, however, corporate taxes will be higher than under existing law. Some of this comes from a tougher corporate minimum tax, intended to end the spectacle of profitable companies paying nothing or receiving tax refunds.

There's considerable disagreement over what the business tax changes could mean for the economy—particularly about whether the bill will depress business investment. The conference agreement repeals the investment tax credit and lengthens some depreciation schedules, particularly for real estate investment. Some experts argue that the higher corporate taxes will have a sufficiently negative effect—at least in the short-term—to worsen the economy's doldrums.

I do not discount these concerns; my State has never fully recovered from the 1981-82 recession, and anything that adversely affects the current fragile economy is extremely worrisome. But there is general disagreement about just what the short-term impact of the tax reform bill will be. It will also be difficult to isolate the effect of tax changes on the economy: overall fiscal and monetary policy, the value of the dollar, and economic conditions in other countries will all have substantial influence on the performance of our economy in the next few years.

I have spoken repeatedly about the declining competitiveness of many U.S. industries; I believe that the challenge of restoring our economic competitiveness is the most crucial problem facing our country. But I do not see how defeating this tax reform package will improve our competitiveness. Without question, the present tax system channels investment into some unproductive areas: half-empty office buildings and shopping malls and other projects that would not be undertaken in the absence of tax breaks. The 1981 tax cut, which gave enormous new breaks to business and spurred the growth of real estate shelters, is partly to blame for this situation. And for all of its emphasis on investment incentives, the 1981 act was primarily a huge raid on revenues—which did not prevent investment from sagging or industrial competitiveness from slipping. Over time, I believe, the tax changes should lead to a more productive economy—by halting the drain of resources into investments which really do not contribute to the Nation's wealth.

The bill could also, over the longer term, prompt industry to expand operations here in this country instead of overseas. A variety of technical changes reduce the ability of multinationals to get tax advantages by shifting income and expenses among foreign subsidiaries. The lower corporate tax rates also reduce the attractiveness of the tax credits multinationals now get for taxes paid to foreign governments. As badly as we need the jobs, we should welcome tax changes which encourage companies to keep plants here at home.

It is also possible that the tax bill will have a favorable effect on interest rates. The combination of lower tax rates and limitations on the deductibility of nonmortgage interest should make borrowing less attractive to consumers and businesses—and push interest rates down. If this happens, the benefits of lower interest rates should make up, at least in part, for the loss of the investment tax credit and resulting increases in the cost of capital.

The bill is designed to reduce wide variations in the effective tax rates corporations now pay. A survey of 30 large companies in last month's Wall Street Journal showed enormous differences, ranging from rates of close to 40 percent to less than zero. The provisions for a 20-percent corporate minimum tax should do much to "level the playing field" by making the tax rates on profitable companies more uniform.

But the short-term effects of the bill may be painful for some industries. Some provisions take effect abruptly—even retroactively, which I consider regrettable. The investment tax credit, for example, is repealed as of January 1, 1986, because the revenue gains from doing so are very large. At least, in this case, businesses saw it coming, as every tax reform proposal since the first Treasury plan included repeal of the ITC. Because of this, it is possible that the main negative effects have already been felt: Business investment surged briefly at the end of last year, in anticipation of the tax change, and has fallen off in 1986.

Because revenue considerations tended to determine how particular provisions were phased-in or out, transitions to the new system were not always smooth. I would have preferred to see more gradual phase-ins—and more of an effort to lessen the possibility of dislocation, as the path to enduring reform.

Parts of the bill—including some of the transition rules—respond to specific problems of certain West Virginia industries. A Senate provision permitting flood-damaged businesses to get the benefit of existing depreciation schedules on investments they make to rebuild their facilities survived in the conference agreement. There is also a very important provision that will reimburse steel companies for a portion of their unused investment tax credits. Another rule permits Weirton Steel to use an expiring tax credit for companies with employee stock ownership plans [ESOP's] for an extra year, through December 1987. And the conference agreement preserved percentage depletion—which is vital to the coal industry, in at least partial recognition of the distressed condition of natural resources industries.

Preferably, major changes in tax policy should be introduced when the economy is healthy. With growth recently down to an anemic pace of 0.6 percent in the second quarter, conditions clearly are not ideal at present. But I don't think we have the luxury of waiting for a better time to pass this bill. Alan Greenspan, former Chairman of the Council of Economic Advisers, recently counselled the Congress that it's really "now or never." We're unlikely to get another chance

to move this far with tax reform if we let this opportunity slip by.

Undeniably, there are serious problems with the state of our economy. Growth is sluggish; real interest rates remain very high. We're still facing a sequence of huge structural deficits in the Federal budget, and a trade deficit that could hit $200 billion this year. Productivity growth has been unimpressive in recent years, and unemployment is still quite high by historical standards. There is much we should do—quite apart from the tax bill—to address these problems and improve our overall economic performance.

I am troubled by the very real possibility that the tax bill, in practice, will end up losing revenue. Although the estimates from the Joint Tax Committee are well prepared, and attempt to account for various changes in taxpayer behavior in response to the bill, there are simply too many unknowns to have much confidence in their precision. And because there's more reason to think the revenue estimates are too high than too low, our problems with staggering Federal deficits could become even tougher.

In closing, I do not think we have reached the end of the road with tax reform. The bill does a great deal to remove loopholes and make the system fairer. I recognize the value of letting the dust settle and giving taxpayers some certainty that the rules will not change again for awhile. But if problems we could not anticipate arise, adjustments should be made.

I think it is unfortunate that so often, the bill is described as a tax cut. People have been led to equate tax reform with tax relief—and to focus on how much the bill will lower their taxes. For most individuals, the combination of lower rates and increased standard deduction and personal exemptions will more than offset the loss of particular deductions and credits. For many, however, these benefits will be modest—perhaps several hundred dollars a year. And some people will see their taxes go up.

What the bill really does is broaden the tax base and shift the tax burden: from individuals to corporations; from taxpayers whose main income comes from earnings to those with preference income. In the process, it reverses the policies of the 1981 tax cut—and greatly limits the long-standing practice of using the tax system to achieve specific social and economic goals. With these benefits in mind, I think the risks are worth taking, and I urge adoption of the conference report.

□ 1330

Mr. PACKWOOD. Mr. President, I yield 3 minutes to the Senator from Georgia.

Mr. MATTINGLY. Mr. President, we have had a long and intensive debate on the tax reform bill. We are now down to the final stage. I believe this bill is important for the future of our Nation. It represents a commitment to fairness and equity. It provides an incentive for savings and investment. And it embodies a design for opportunity and growth.

Unlike past changes in the Tax Code, this bill does more than shuffle the loopholes. The rates are simplified. This bill has just two rates—15 and 28 percent. By reducing these rates, we will encourage hard work and good investment decisions based on economic realities. This will help create new jobs for Americans. And there will be only one rate for corporations—34 percent. This lowering of rates is the driving force behind the bill.

Under this bill, 6 million of the working poor will be taken off the tax rolls. This is only right. In some cases, the tax burden they currently face is enough to force them to use food stamps in order to make ends meet. It is time we let those people keep their entire paycheck. These individuals should not have to face the discouragement and heavy burden of these Federal taxes. The bill seeks to help those who seek to help themselves.

But it not only helps our poorest citizens. For the first time, there is a minimum tax so everyone will be paying a fair share of the tax burden. No longer will we read of multi-billion dollar corporations avoiding any tax payment whatsoever. And I think that is right.

This bill is good for American families. It increases the personal exemption and lowers the tax rate. This means most people will have more money to take care of their families. The bill also protects homeownership deductions. It gives the American family a break—a break I certainly believe they deserve.

Mr. President, in a tax reform bill of this magnitude, there will be some provisions which will not please everyone. In fact, there are some issues I would like to have seen treated differently. I have stated throughout the debate on the bill my support for individual retirement accounts [IRA]. I remain convinced they are good public policy and a strong incentive for savings. It was my desire to see current law retained in this area. The retroactive application of many of the provisions in the bill still concern me, also. As I stated on the Senate floor during the debate, I do not believe it is right to penalize taxpayers for investment decisions made in good faith.

But overall, this is a very good bill. My friend and colleague, Senator BRADLEY, summed up this bill in a very eloquent speech he gave on this floor during the Senate debate. At that time, he said:

> Tax reform is not just about money. It is about hope: Hope for low-income people, striving to give their families the chance of a better life; hope for the elderly, struggling to get by on fixed incomes; hope for young couples priced out of the American dream of ownership; and hope for the worker whose future depends on a growing economy.

Mr. President, once we complete our work on this bill, it is America's turn to live with it, and produce with it. But the overwhelming opinion of this country's taxpayers and the Nation's business sector is—Congress should quit changing the tax laws. They do not want to see the old way of doing things return. They do not want to see tax increases and new loopholes added in 1987—and neither do I. Congress should step back and let the private sector take over. They do the best job of running the free enterprise system—not the Government. Continuous changes in the tax laws cause uncertainty in the private sector. This is not what they need. They need stability and reliability.

In conclusion, the final measure of this bill can be addressed in just one question: "Is this tax reform bill better than the current Tax Code?"

I believe the answer is yes. The current Tax Code is sinking under its own weight. This bill will establish a much better Tax Code.

Mr. President, this will be one of the most significant pieces of legislation we will ever vote on during our years in the U.S. Senate. I strongly support this bill and urge my colleagues to join me in this effort.

□ 1340

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be charged to neither side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, as I indicated earlier, there are a number of these transition rules that were not in either bill and I am having difficulty understanding why they wound up in the 400 addons. I intend as the afternoon wears on to be able to inquire of the manager of the bill concerning a number of them. He and I have an understanding. He is attempting to get the appropriate answers, and I understand that full well.

However, one of them is a matter to which the minority side manager of the bill is prepared to respond and it has to do with Middle South Utilities.

Under the proposed bill any company can get a credit against its minimum tax up to 25 percent of that amount by using its investment tax credits. But one company which, as I understand it, operates I think in Illinois and Louisiana——

Mr. LONG. One company in Illinois benefits from the transition rule the distinguished Senator from Ohio has mentioned. In addition, Middle South Utilities is covered under that transition rule. Middle South serves customers in Louisiana, Arkansas, and Mississippi.

Mr. METZENBAUM. Middle South is in Louisiana, Arkansas, and Mississippi. I thank the Senator for the clarification. I did not know.

That utility has a carve, a special carve, out for it and it will be partially exempt from the new minimum tax rules to the tune of $20 million. Twenty million dollars in the world in which we live around here is not that much money. Or is it? Yes, maybe it is. With $20 million we could make room in the Head Start Program for 4,000 underprivileged kids, 4,000 underprivileged kids in the Head Start Program. Take your choice. Do you want to help Middle South Utilities get a special exemption from the minimum tax provisions that everyone else participates in, that the law is applicable to everyone else, take care of this one company that operates in three States, or take care of 4,000 underprivileged kids so they might be in the Head Start Program?

Mr. President, I, myself, feel that 4,000 underprivileged kids are—there is no comparison. There is no comparison. They are more important.

I do not know more important but equally important is the question of why did we choose one company out of all the companies in the Nation to get this special carve out from the minimum tax.

I say to you, Mr. President, that once we set the ground rules, once we provide an exemption from the minimum tax for one company, watch out, here we come, because everybody else will want an exemption and there are other matters that I expect to get into this afternoon which will prove that very point where there was an intention to provide special consideration for one company. By the time they got done they wound up with a substantially larger number of companies and now I am told they want to make it applicable for all the companies. When you have an exemption around here for one, too often you take care for all.

We do not do that, I might say, when we have Head Start Programs or WIC Programs. We only go so far where we have the money. No one really wants to take care of everybody that is entitled to it.

But in this instance, Middle South is to get a special advantage.

Mr. President, it is my understanding that the distinguished Senator from Louisiana is about to respond as to the reason for this.

I yield the floor.

Mr. LONG. Mr. President, may I speak on the Senator's time? I do not have time. I farmed all my time out to other Senators.

Mr. METZENBAUM. How much time—3 minutes.

Mr. LONG. I might need 5 minutes to respond to the Senator.

Mr. METZENBAUM. I yield 5 minutes.

Mr. LONG. Mr. President, Middle South is an investor-owned utility company serving the States of Louisiana, Arkansas, and Mississippi. Mr. President, I am informed that Middle South has more earned, but as yet, unused tax credits on its books than any other company in the entire United States. A major reason for this is Middle South was prevented from building cheaper natural gas plants by Federal energy policy which only left the option of building two expensive atomic generating plants which we did not want. The people from Arkansas are trying to get completely loose from this thing because it requires their consumers to pay higher utility rates than they would have to pay otherwise. And we in Louisiana and Mississippi will be stuck with higher utility rates because we are compelled to pay for these expensive nuclear generating by Federal energy policy.

So we have all these tax credits. Every dollar of these tax credits which had been earned—I would like the Senator to hear this.

Mr. METZENBAUM. I am sorry.

Mr. LONG. Every dollar of these hundreds of millions of dollars of tax credits—that have been earned by Middle South will be used to reduce the rates the utility charges its customers. Every dollar which the company is permitted to claim under this provision will result in a dollar of savings for the ratepayers. So the $20 million the Senator is talking about is just $20 million that the people of Louisiana served by Middle South will not have to pay.

Now, please understand our consumers are going to be paying for a great deal more to begin with. We will be paying hundreds of millions of dollars in higher rates as a result of the facilities covered by the rule. If Federal energy policy had allowed us to use our own natural gas that we have in abundance in that part of the country the rates would have been hundreds of millions of dollars less.

The House had language in their bill, a so-called megawatt rule, and that is a benefit to the State of Mississippi and also the State of Illinois. I believe it is there because they have a big generating plant in Illinois and I think Illinois was well represented on the House side.

□ 1350

That rule does not benefit the Louisiana plant. So Illinois could get the benefit of it, the Mississippi plant could get the benefit of it, but the Louisiana plant could not get the benefit of it.

And, why not? Well, because one could get the benefit of it if the capacity was between 1,109 and 1,149 megawatts. Well, it just happens that the Louisiana plant is 1,104 megawatts.

Now, why these numbers? Well, it was drawn for the benefit of the Illinois plant. So it was felt that was not quite fair. And if people were to be permitted to use their tax credits, Middle South that needed it worse than anybody, where every nickel of it would go to the consumers, ought to be permitted to share some of the same benefits that would go to the plant in Illinois.

Mr. President, with respect to every one of these transition rules, any transition rule that benefits the State of Louisiana or anybody in Louisiana, I would have no objection to it being applied generally to others in the same situation across the country.

I told the chairman of the committee that if something benefited the State of Louisiana and could not be made applicable to others in the same situation, he could take mine out, and in some cases he has taken them out.

All we are asking is that we be treated somewhat—not as well—but at least somewhat along the same fashion as the State of Illinois is enjoying with their generating plant and the similar plant in Mississippi.

Understand, Middle South will not be able to keep a nickel of this, it will be passed through to the ratepayers. In any event, the company will still be paying a tax, they will, however, be permitted to reduce a portion of their minimum tax by using tax credits which the company earned slightly earlier. It would just take more time if the rule were not included. This permits them to use their credits a little sooner than they would be able to use it otherwise.

Mr. METZENBAUM. Mr. President, I appreciate the candor of the Senator from Louisiana. And, as always, he is very candid. It is a fact that Illinois, the company in Illinois, gets the benefits, gets carved out and does not have to pay the minimum tax. Now, we come over to Louisiana and they get a carve out from having to pay the minimum tax.

And the argument is made that they have to do that because why should they not since Illinois has already had it? That proves my point. A minimum tax was intended as a minimum tax

for everybody; not for somebody, but for everybody.

What we have here is the exact proof positive of the point that I made earlier, and that is that every time you start with one exemption from a law that has not even been enacted into law yet, you carve out one exemption after another exemption after another.

I have said that this was going to be an exemption of 50 percent of the minimum tax. I was mistaken. As the distinguished Senator from Louisiana points out, it is 75 percent of the minimum tax.

Well, why do we not just eliminate the minimum tax entirely? What they are doing is using that investment tax credit, that matter about which so much has been said today and yesterday, and using that in order to keep from having to pay taxes.

Twenty million dollars? The world will not come apart, it will not balance the budget, but it is just another example of one of those provisions in these transition rules.

And this is not a transition rule. This is a rule that is made to benefit a particular utility. The distinguished Senator from Louisiana is kind enough to say it will be passed on to the consumers. Fine. I do not know whether that is a fact or not, but I accept his representation. I am not questioning his representation.

But what about the rest of the people in this country? What we are really saying is that all the taxpayers of the country are going to get together—they do not know it—but what, in effect, we are doing is all the taxpayers of the country are joining together and putting together a little pot so that the consumers in Louisiana will not be paying those rates that they might otherwise be paying.

Now, my feeling is that actually utility companies do not often reduce their rates by reason of special tax credits they get. When they have to pay higher taxes, they increase their rates, but I do not know that they very oftentimes reduce those rates.

But whether they do it or do not is not the issue. The issue is why should all the taxpayers of this country join together and put up a pot of $20 million so that one company in Louisiana may have an exemption from the minimum tax which we have striven so hard to bring into being?

I yield the floor.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I yield myself 1 minute.

Mr. President, the bill makes this company a minimum taxpayer, so the bill creates a problem.

All this says is, just as relief is provided to others who would be adversely affected, some consideration is given to the fact that Middle South is very adversely affected in a fashion that could not be foreseen at the time they built these plants. The company does not end up keeping one nickel of the money. It all goes to the benefit of the ratepayers who are going to have to pay more than the national average anyway because they have these two nuclear plants.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and ask that it not be charged to either side.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I am trying to turn back to a number of questions that I have for the distinguished majority manager of the bill. I have been trying to work with him so that he may be prepared for the answers. He now tells me that the question in connection with AIG/CIGNA is one for which he is ready.

On page 497, AIG/Cigna is handed $20 million. I am frank to say I do not know what AIG/Cigna is and I certainly do not know why they are given $20 million.

Will the chairman be good enough to so indicate to the Senator from Ohio?

Mr. PACKWOOD. Yes, I will.

Let me ask one question, if I might. When the Senator gave us the transition rules for Ohio, did you give us all the transition rules that people asked you for or did you pick and choose among them and give us some?

Mr. METZENBAUM. The answer is we did not give you all the transition rules people asked us for. We tried to discriminate on the basis of what we thought were meritorious. If we thought a project had been started and really was entitled to a transition rule, we advised you of it.

Mr. PACKWOOD. I will answer your question on AIG/Cigna—they are two companies—but before I do, I have a question about Northstar Steel. Would that fit into that definition you just gave?

Mr. METZENBAUM. It is a perfect example. I went to Northstar Steel the other day and what a wonderful example of development that is. I was in the plant. They took an old plant—I think it was Republic Steel, I am not sure of the name of which one it was, because all of them are closed down in Youngstown—they took this beat up and battered old company and they are spending $80 million of their own money in it. They felt they were entitled to be treated on the basis of the fact that they had already proceeded forward. They have some people working there digging with derricks. I walked through the plant. I got filthy walking through the plant. But there is a lot of work going on there, and that one I am positive is in the transition.

□ 1400

Mr. PACKWOOD. That is a very valid answer, and based upon your judgment and your honest discretion you thought this is one that is entitled to relief.

Mr. METZENBAUM. I saw the facts. I went there to see for myself.

Mr. PACKWOOD. Everyone of us has exercised I think the same kind of judgment you did with Northstar Steel in saying this one I honestly think is worth it.

Mr. METZENBAUM. This one I can vouch for for the fact that they are spending their own money, they are operating and moving forward under the old law, and it is justified.

Mr. PACKWOOD. I am not trying to quarrel with the fact. I think it is justified. That is one of the reasons we put it in among the many requests we had from the different Senators. We put in the Cleveland Dome Stadium. As best as I can tell there has not been a spoonful of earth ever turned yet for the stadium.

Mr. METZENBAUM. But the fact is they have bought a substantial portion of the property, and have demolished buildings where they expect to locate.

Mr. PACKWOOD. I understand that.

Mr. METZENBAUM. They moved forward and are spending money.

Mr. PACKWOOD. The Cleveland Dome Stadium is going to be receiving about $10 million in transition rule bonds, and we know of course who the purchasers of the bonds are. They are easily the highest 1 percent income people in this country. I am thinking of what could have been done with that $2 million. We could have used that $2 million to help 2,000 kids in the Head Start Program. Instead, the money is being used to save the stadium so we can pay the baseball and football players $500 or $1 million, and allow the very richest people in this country to buy the bonds; instead of helping those 2,000 poor little underprivileged kids in Head Start.

Mr. METZENBAUM. I have said consistently I have no quarrel with the legitimate transition rules. But when transition rules are put into effect for people who are going to buy airplanes sometime in the future, that is not a transition rule.

Mr. PACKWOOD. When transition rules are put into effect so people can buy bonds who are as rich as the people who buy airplanes, I am questioning the value.

Mr. METZENBAUM. There is quite a difference because transition rules relate to those people who have already taken some action with the understanding of what the law is. Then you change the law, and you want to not make the new law provide a penalty.

I have said to the Senator from Oregon not once but 10 times both in connection with the original bill and in connection with this one that I do not have any fault to find with it. I have said that publicly on the floor more than once today, and yesterday.

What we are talking about is taking care of reaching out and taking care of a group of insurance companies, and saying they do not have any reason to be involved in transition rules. What I am talking about is these people buying airplanes when nobody knows who they are.

Mr. PACKWOOD. Earlier my good friend was talking about the procedures, the secrecy, and the darkness in which this was done.

Mr. METZENBAUM. There is no secrecy.

Mr. PACKWOOD. That is right.

Mr. METZENBAUM. There is no secrecy as far as the four transition rules we talked about.

Me. PACKWOOD. But secrecy only in this sense: I will wager that all of the transition requests which you got you did not have public hearings on them, and you decided yourself as to which ones you would choose.

Mr. METZENBAUM. Of course.

Mr. PACKWOOD. Utterly in the dark of the office of the night. How do I know who you are trying to favor and not trying to favor with your decision to put them forth quietly and secretly without any publicity.

Mr. METZENBAUM. There is no secrecy at all because we put out press releases saying we were asking and we were told you were asking for them. We never asked you to treat them confidentially. There is a big difference when you hand us 400 transition rules and nobody ever heard of them.

Mr. PACKWOOD. I am saying it is not much different than what you did, you chose among all your constituents which ones to favor and which ones to disfavor by never submitting the transition request. That is not a decision made in the daylight. That is a decision you make privately for whatever personal reasons you choose to pick and choose among the different ones you give us.

Mr. METZENBAUM. I have to respectfully disagree with my colleague because those which we asked for we feel are justified. We know enough about them.

I said to you, and you have already said to me, you do not know the facts with respect to many of these. That is the reason my question is coming to you later in the afternoon because you did not know the answer, and I said fine. I understand that.

(Mr. TRIBLE assumed the chair.)

But the fact is you put your imprimatur on some of those transition rules, an awful lot of them, without knowing anything at all about them. Middle South Utilities is one we just talked about. I have great difficulty in understanding how anybody can give them an exemption from the minimum tax. I have difficulty with many of these others that we are providing it for.

It is my own opinion, if I may respectfully say so, that left to your own designs if you had the votes, you probably would have knocked more of them out than are presently on the agenda.

Mr. PACKWOOD. I would probably what?

Mr. METZENBAUM. You would probably knock out or eliminate a lot more of them.

Mr. PACKWOOD. I have indicated twice before, and I will say again, that in making subjective decisions I would not be surprised if your office, my office, or among our staffs or in the Senate or in the House on occasion political considerations crept in the body politic. That is amazing. I realize we all cannot be pure. Some of us are more pure than others, I guess.

All we can try to do is make an honest decision, as you can, and on occasion you trust somebody else's judgment. On occasion you trust the judgment of DAN ROSTENKOWSKI in the House to be a decent human being, and by and large they are. It is amazing.

Mr. METZENBAUM. Nobody says we do not trust the chairman of the Finance Committee, or the chairman of the Ways and Means Committee. That is not the issue. The issue is why was all of the secrecy, why was it not put up on top of the table, and why are we still having difficulty finding what it is all about?

Mr. PACKWOOD. I will tell you why all the secrecy. To begin with, I was intrigued earlier with what my good friend from Ohio said about the secrecy. This bill, the original bill, that went through the Senate was crafted in secret, and passed in secret in the Finance Committee.

Until the bill was finally approved by the committee, it was drafted in good measure by the staff. My hunch is that television cameras were not grinding away over their shoulder as they drafted and crafted the bill. It was done in secret.

The members of the Finance Committee then took it up, and in the last 4 or 5 days we met behind closed doors. Do you know what we discovered? When we met behind closed doors, every member of the committee was willing to vote for what he thought was in the public interest, and almost every member would come up afterwards and say, "BOB, I am glad we are doing it this way. If I had to vote in public, I would not be able to vote against the insurance companies, homebuilders, or realtors. I want to do what is right for this country."

It was done in secret. Does that make it evil, bad, or terrible that a result was reached without the glare of lobbyists looking over your shoulder. When done in public, we found that as soon as you so much as blink, out go the telegrams to Members, and back come the telephone calls. We discovered that the members would not do what is needed to create the best Tax Code in 70 years.

Mr. METZENBAUM. The Senator knows that I have indicated many times that I intend to support this tax bill. But I am talking about not what the conference committee did in secret. I understand they are having to meet without having television cameras glaring, without having all the media in, and without having all the lobbyists in.

I am talking about the question of the floor, and our knowing about what is going on. And that is a totally different proposition.

Mr. PACKWOOD. Now let us go through the process again so we understand openness versus secrecy. From the time the Senate bill passed, we received roughly 1,000 requests from 94 Senators for additional transition rules for which we have $1 billion to spend.

I started to cost all of those requests out. Finally, they were coming in so fast we could not keep up with the process. The joint committee did the best they could. They could not keep up. But my guess is those rules would cost somewhere between $10 and $20 billion. That was totally inadequate.

I did not sit down and go through all 1,000-plus requests one by one, nor did I try to hold the public hearing on all 1,000 of them. Even if I could give the witnesses 10 minutes each, there would be 10,000 witnesses, and 100,000 minutes.

So what we did is say to the staff, "Here are the rules by which transitions are to be selected. Try to avoid violating those rules." By and large they were successful. We asked them to try to pass on the merits of the rest.

We divided up the total amount of money that we agreed would be used for transition.

The House had more money than the Senate because the Senate had spent more money initially than the House had. We accepted the House re-

quests and they ours, so long as they did not violate the agreed-upon rules.

□ 1410

Mr. METZENBAUM. I want to repeat, that the Senate had spoken with your approval because it would not be passed without your approval, that when you came back from the conference committee you would tell us the name of the company involved, the reason for the special or the unique treatment, and the cost. That was dropped out summarily at the conference committee. I want to point out that this did not say the House has to be informed. This was the Senate which wanted to be informed. It was the sense of the Senate that this should be continued in the conference report. We were to be informed about it.

I say the House has its way of conducting their business. We have not been able to get the facts.

Now let me permit the chairman of the Finance Committee to respond.

Mr. PACKWOOD. AIG/Cigna are two companies, although we refer to them as hyphenated. The rule applies to reinsurance among related corporations. The rule results in termination of the reinsurance contracts in many cases, since there will no longer be tax advantages. Many of these reinsurance contracts have been in place for many years. This is a 3-year phasein that will give a small transition period to help the companies restructure their business.

To the best of our knowledge, these are the only two companies affected. We rifle shot these two companies so that we did not inadvertently open up a generic rule that other companies would take advantage of.

Mr. METZENBAUM. Am I correct that these two companies are not American companies, or that the home offices are not located here?

Mr. PACKWOOD. Their home offices are in Philadelphia and New York.

Mr. METZENBAUM. Are they not foreign owned?

Mr. PACKWOOD. No.

Mr. METZENBAUM. Is it not a fact that they engage in considerable offshore activities?

Mr. PACKWOOD. Yes, that is correct, as do many other insurance companies.

Mr. METZENBAUM. Are they not engaged in offshore activities which would be tax havens involving their facilities?

Mr. PACKWOOD. Most of the risks that they insure are in major Western European countries.

Mr. METZENBAUM. That was my understanding, that they were really primarily a company dealing with foreign operations rather than American. It was my understanding that they were foreign owned.

Mr. PACKWOOD. I hope my good friend is not implying that American companies should not do business abroad.

Mr. METZENBAUM. I am not suggesting that at all.

I did not quite follow what the Senator was saying. What are they being exempted from?

Mr. PACKWOOD. They would be taxed currently on their foreign taxable income rather than receiving the deferral as under present law. We gave them a 3-year transition to phase in the new tax law.

Mr. METZENBAUM. So that is the $20 million cost?

Mr. PACKWOOD. The net cost of all of these transition rules is about $10.6 billion. Some of them are quite expensive. Here is one for $71 million. Some are less than $100,000 in some cases.

Mr. METZENBAUM. But this particular company would pick up $20 million.

Mr. PACKWOOD. That is corrrect.

Mr. METZENBAUM. Is the chairman of the Finance Committee prepared for additional questions?

Mr. PACKWOOD. I will request a quorum call and find out.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. PACKWOOD. Mr. President, if the Senator from Ohio wants to go on to the Willard Hotel, we are ready.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, under the transition rules, the Willard Hotel is given an exception not only from a new rule contained in this bill, but from a limitation enacted in 1982.

The question is: A, what will this provision cost the Treasury? B, why 4 years after the 1982 enactment do we go back and change the rule for one developer?

It is certainly hard to make the argument that we did it in order to help him with his development, since the development is already in place and finished.

Mr. PACKWOOD. You are right about the 1982 law. That changed the rehabilitation tax credit but it grandfathered all existing binding contracts. There was a binding contract on the Willard at the time. They had not even started their internal demolition and reconstruction of the hotel. However, grandfathering also required that the project be completed by January 1, 1986.

As most of us are aware, the Willard was a huge rehabilitation project. It encountered delays with the District of Columbia's traffic designers. It slowed down construction through no fault of the Willard.

Because of the size of the project and the delays, the Willard was not opened until the last few weeks. The transition rule merely extends the date by which the project would have been completed.

Mr. METZENBAUM. I accept that explanation. I think, frankly, it is one of the more logical explanations, meaning no disrespect for the previous ones.

I would say it is more justified. It sounds as if they were delayed for reasons beyond their control. I see no objection to doing that. I appreciate the answer.

Mr. PACKWOOD. I am advised that this involves approximately $1 million.

Mr. METZENBAUM. Is the Senator from Oregon prepared with respect to any of the other questions?

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it not be charged to either side.

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

The bill clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, page 194 contains a rule regarding an air carrier merger. It is an air carrier merger about which we have heard a good deal. The transition list identifies the beneficiaries as Texas Air and Eastern. It cost $47 million.

Let us be realistic about it. The Texas Air-Eastern merger has been in the works for a long time and it is going forward. In fact, it is just about finalized.

Why are we now saying to them, here is a gift of $47 million from the U.S. taxpayers?

That is beyond me. They make their deal. There is no reason to retroactively make this kind of adjustment. It seems to me that we are just giving away money. They knew the tax bill was being changed. They knew what the new law was going to be. They did not say that their deal was conditioned upon Congress doing something.

They knew all about it. They intended to proceed and did proceed. Under the circumstances, I have great difficulty understanding why the conference committee decided, on this very highly publicized merger, which Texas

Air and Eastern have been working so hard to put through—all of a sudden, we say congratulations and as a token of our recognition of what you have done for yourselves, we will give you $47 million.

I say to my distinguished colleague that my time is beginning to run down. I am not asking him to use his time, but I shall yield him 3 minutes to respond. Beyond that, I ask him to use his own time.

Mr. PACKWOOD. I thank my colleague.

This transition rule was put in by the House. It grandfathers the merger of Texas Air and Eastern from the new limitations on the net operating loss where a loss company is acquired.

Of course, Eastern is a company with significant net operating losses. The new rules go into effect on January 1, 1987. The merger transaction was in process on July 17, 1986, but it cannot be completed before March 1987—again through no fault of the two airlines. So they are caught in this transition period. So we gave them the transition.

Mr. METZENBAUM. Though it is the fact that the January 1, 1987, deadline is there, it is a fact that regardless of what the conference did, they would have been able to use the net operating loss carryforward. They did not need any special tax legislation for that.

It is my understanding that the Senator's amendment provides for some special tax treatment. The net operating loss carryforward I understand. That is an accepted accounting practice. But I believe as I read this—and the Senator might clarify it for me if I am wrong—this gave them some special tax treatment that did not have to do with the fact they had a net operating loss carryforward at Eastern.

As I understand this rule, my staff tells me that this provision exempts them from the provision that is in this bill that precludes a company buying up a net operating loss carryforward and using it against its own income.

Mr. PACKWOOD. The new rules go into effect on January 1, 1987. Because this merger will not be concluded until March, we simply exempted them from that January 1 date. We did not create any new rules or change any results. We simply exempted them from the January 1 deadline.

Mr. METZENBAUM. The point I made previously is they knew what was in the tax bill. They did not know what would be in the conference report.

The PRESIDING OFFICER. The 3 minutes yielded by the Senator have passed.

Mr. METZENBAUM. This will be my own time.

Mr. President, they knew what was going on and they never said, "Our deal is conditioned upon getting this special provision." As a matter of fact, it is certainly a very well publicized fact that Texas Air was trying in every way possible to complete the deal we are concerned with but they could not complete it. Eastern wanted very much to complete the deal. So we did not need to give them the $47 million. That is the thing that concerns me.

I understand in some situations—the Senator told me before that the Morgan Guaranty building, if they did not do it before a certain date the company might have left the area and that would not be in the public interest. That is a fact neither the Senator nor I knows. But the fact is that this is the argument. But here is a company moving forward, making the deal. There is no indication that they would not have made the deal and would have affected any particular public interest for them to make the deal. They wanted to make the deal and wanted to go forward. Why give them $47 million?

Mr. PACKWOOD. They made the deal, as the Senator calls it, on July 17 hoping to complete it this year. They did not complete it this year. On July 17, there had been no conference. The bill had passed the House, had passed the Senate. There was no conference on July 17.

Were they running a risk? Yes, they were running a risk. They were not able to complete the deal through no fault of their own.

It is not unlike the Willard Hotel. They thought they would be done by January 1, 1986. They were not. These two companies thought they would be done with their merger by January 1, 1987. They will not be.

Mr. METZENBAUM. I do not think it is quite comparable to the Willard Hotel situation, but suffice it to say that I do not think that was good judgment or a good use of the taxpayers' money. But I am not going to belabor the point.

Is the Senator from Oregon prepared to discuss some of the other areas I would like to inquire about?

Mr. PACKWOOD. Johnson & Johnson.

Mr. METZENBAUM. Mr. President, page 489 of the bill provides Johnson & Johnson $38 million in benefits. What rule is Johnson & Johnson being exempted from and what public interest is served? I yield the Senator from Oregon 2 minutes of my own time.

Mr. PACKWOOD. The administrative expenses are not allocated to foreign sources if you can trace them to a U.S. corporation. Therefore, a multinational corporation would not have to allocate the funds paid in the United States to foreign sources if they can show it belongs to a U.S. operation. Johnson & Johnson has foreign and domestic operations. They use separate corporations, but they cannot trace the expenses. Therefore, they need a phase-in that would allow them to show their actual tracing. Therefore, we gave them a 3-year phase-in to make that allocation.

Mr. METZENBAUM. Is that part of the Johnson & Johnson operation in Puerto Rico?

Mr. PACKWOOD. No.

Mr. METZENBAUM. Is it not a fact that if we make this rule for Johnson & Johnson, we open up a Pandora's box of other companies who ask for similar treatment because many other companies conduct their business in a similar manner?

Mr. PACKWOOD. No, Mr. President, I do not think so. In the tax reform bill, we have a tracing provision. If you can trace your expenses, then you do not need this rule. Johnson & Johnson cannot at the moment trace and they needed the time to separate the two operations.

Mr. METZENBAUM. They will get $38 million over what period of time?

Mr. PACKWOOD. Three years.

Mr. METZENBAUM. I just have to say, is that not their problem? When we start to make tax laws to accommodate the variety of business methods that are used by various corporations, do we not find ourselves in the position eventually of writing tax bills all with rifle-shot intent to take care of Johnson & Johnson and PDQ and XYZ and every other company? That is part of the problem the Senator from Ohio has with these transition rules, that these are rifle-shot provisions, taking care of a company or two companies—in the case of insurance companies, 15 companies. What this does is wind up subsidizing their foreign operations. That is one of the most defective aspects of it.

Mr. PACKWOOD. My good friend cannot have it both ways. He says the problem is he does not like the rifle-shot picking up one company. He does not mind asking us for Bowling Green solid waste disposal facility or the Zimmer coal plant. These are all rifle-shot for companies in the Senator's State.

Mr. METZENBAUM. Just so we do not get the record confused, I did not ask for all of those. In fact, until the Senator mentioned them—I did not ask for Zimmer. Did the Senator say Bowling Green?

Mr. PACKWOOD. Bowling Green solid waste disposal facility.

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Mr. METZENBAUM. I have no recollection of having asked for that. In fact——

Mr. PACKWOOD. Does the Senator want to see the letter he sent?

Mr. METZENBAUM. I have no recollection. Sure, I would like to.

Mr. PACKWOOD. Does the Senator want to see the letter that he sent asking for it?

Mr. METZENBAUM. In conference?

Mr. PACKWOOD. Yes.

Mr. METZENBAUM. Maybe I did. But I have no recollection of that.

Mr. PACKWOOD. Let me read it if I might. "March 13, 1986, Dear Bob. I have enclosed a copy of a letter that I received from the city of Bowling Green, OH. Last year the city enacted legislation," and so on. And then you asked to be grandfathered. "Sincerely, HOWARD METZENBAUM." I would hope the Senator knows the transition rules he asked for.

Mr. METZENBAUM. I guess, if the Senator just read that letter, I passed the letter on to him. I do not see anyplace where I requested it, did I?

Mr. PACKWOOD. Oh, yes.

Last year the city enacted legislation authorizing the issuance of industrial development bonds to construct a facility to control air pollution and to dispose of solid waste. The city has asked to be grandfathered from any provisions which would impair their ability to market these bonds in 1986.

Your consideration to their request is greatly appreciated.

I assume that you wanted me to act favorably.

Mr. METZENBAUM. That is a fair interpretation. I agree with that. I have no recollection. Unquestionably, the Senator is right. I sent the letter. But the point is that is not the same as this.

Mr. PACKWOOD. That is a rifle-shot for the Bowling Green bonds.

Mr. METZENBAUM. I understand it is a rifle-shot but now the Senator is addressing himself to the rifle-shot. I am talking about the fact that—we are talking about transition rules. Transition rules are supposed to take care of the very situation we had there in Bowling Green, although I had no recollection of it when the Senator mentioned in on the floor a moment ago, but they obviously were on their way on the project. That kind of rifle-shot I understand. Here you are taking a company—and the rifle-shot I am talking about is you are saying "Well, their accounting procedures don't provide for them to have separate expense accounts for their employees, between their foreign operations and their domestic corporations. Therefore, let's give them a break."

Mr. PACKWOOD. Let us talk about the rifle-shot. The Senator is critical of the fact that we have put into this bill some transition rules from the House that I took on the Houses word, and that we were not familiar with every one of them. The Senator from Ohio does not even know that he asked for one for his own city. If he does not know what he asked for for himself, what kind of a standard is he holding the rest of us to?

Mr. METZENBAUM. As a matter of fact, I was not critical of the Senator from Oregon for taking those from the House. I said I thought we were entitled to know what the facts are. That is what I said.

Mr. PACKWOOD. Right.

Mr. METZENBAUM. Stay with that.

Mr. PACKWOOD. Then a moment ago the Senator was saying, "That is the trouble with the transition rules, they're rifle shots; you are picking out one," just as his requests are picking out one. You cannot have it both ways.

Mr. METZENBAUM. The fact is you can, and there is a rationale, and the rationale is that when a company such as Willard Hotel had moved along and had used the old law and could not finish, I found no objection to that. And I find no objection to many of these others where there are companies that have actually moved along. Johnson & Johnson got special treatment. Johnson & Johnson did not move along. Johnson & Johnson had a different kind of accounting procedure, and so you took care of it. And that is what I object to. That is the kind of rifle shot to which I object.

Mr. PACKWOOD. Johnson & Johnson had an accounting procedure that was used under the present law. We then changed the law.

Mr. METZENBAUM. Right.

Mr. PACKWOOD. We changed the law.

Mr. METZENBAUM. OK.

Mr. PACKWOOD. So we are saying, "Johnson & Johnson, you have relied upon the law, and your accounting procedures have followed the law. We are now going to change the law." And they said, "Give us some time, then, to comply with the new law."

Mr. METZENBAUM. Let me just ask my distinguished colleague, why did you pick out 15 insurance companies and take care of them specially for $119 million without doing it for all companies? And what was there about these 15 companies that made them special that they should get $119 million? Every time we have had a tax bill on the floor, the insurance companies have received special treatment, special treatment. And they take ads in the newspapers telling us that we ought to balance the budget, it is our obligation and we ought to be responsible Americans. They take ads in the Washington Post telling us what we should do. Now they get $119 million given to them as a gift.

Mr. PACKWOOD. This is a very valid criticism that the Senator from Ohio can help alleviate—I mean we can alleviate the problem that the transition rule helps only these 15 companies. This was perhaps the last or next-to-the-last transition rule that Congressman ROSTENKOWSKI and I agreed to at 3 o'clock or 4 o'clock in the morning. And I must confess that on this one I made a mistake. I thought the request related to one company in which the chairman of the Ways and Means Committee was interested. He said, "Bob, this is critical to me and it is critical to the person that I am asking for." He named it. I said, "Mr. Chairman, I will give it to you." I did not know at the time that it related to 15 companies, 15 of the largest—I thought it was one—15 of the largest insurance companies. This transition issue would be much better handled by a generic rule because what you have is 15 of the largest insurance companies getting transition relief on what are called deep discount bonds. I think they buy about 70 percent in the country, but you perhaps have thousands of small insurance companies that buy the other 30 percent that are not covered. I think the rule ought to be changed and it ought to be made generic. I am going to suggest, when we have the concurrent resolution, that we take care of it technically.

Mr. METZENBAUM. But under this provision their taxes would be reduced from 34 to 28 percent; is that correct?

Mr. PACKWOOD. I will take the Senator's word on that. I am not sure.

Mr. METZENBAUM. The profits on these particular bonds?

Mr. PACKWOOD. Under the generic rule, that is correct.

Mr. METZENBAUM. Under the——

Mr. PACKWOOD. Under the bill, that is correct.

Mr. METZENBAUM. Under the bill, that is correct.

Mr. PACKWOOD. Under the generic rule that we have, it would be 32 percent.

Mr. METZENBAUM. It would go from 34 to 32 percent.

Mr. PACKWOOD. Right.

Mr. METZENBAUM. I do not think it ought to go from 34 to 32 but it is less and I gather that that would be revenue equal is what the Senator is saying?

Mr. PACKWOOD. What we would do is extend the transition rule to all the insurance companies in the country, but raise the rate so that we don't lose additional revenue.

Mr. METZENBAUM. I ask my colleagues from Oregon whether or not there are other areas to which he is prepared to respond at this time? I do have a number of other questions.

Mr. PACKWOOD. Mr. President.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. METZENBAUM. Just a minute. I have the floor.

Mr. PACKWOOD. I am not quite prepared to respond right now.

The PRESIDING OFFICER. The Senator from Ohio does indeed have the floor.

Mr. METZENBAUM. Pardon. I have the floor?

The PRESIDING OFFICER. Yes. That is correct.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I be permitted to yield the floor to the Senator from Minnesota for such limited time as he thinks advisable, provided that that time is charged against someone other than myself and that the Senator from Ohio be recognized immediately thereafter in order that I may proceed.

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard. Who yields time? Who yields time?

Does the Senator from Ohio yield the floor? Who yields time?

Mr. PACKWOOD. Who has the floor?

The PRESIDING OFFICER. The Senator from Ohio still has the floor.

Mr. METZENBAUM. Mr. President, does the Senator from Oregon object to my yielding the floor in order that I may regain it at a later point?

Mr. PACKWOOD. Yes.

Mr. METZENBAUM. Mr. President, how much time does the Senator from Ohio have remaining?

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM] has 45 minutes and 14 seconds remaining.

Mr. METZENBAUM. Is it not the fact that if the Senator from Ohio and the Senator from Louisiana and the Senator from Oregon and the Senator from Arizona and the Senator from Montana and perhaps some other Senators as well use up all their time, we will go beyond the hour of 4 o'clock?

The PRESIDING OFFICER. That is indeed the case.

Mr. PACKWOOD. Is that a ruling of the Chair?

Mr. METZENBAUM. I want to clarify that for the Senator.

Mr. PACKWOOD. I do, too, because it is my understanding that we vote at 4 o'clock no matter what.

Mr. METZENBAUM. The Senator from Ohio and the Senator from Oregon are not in disagreement on that.

The PRESIDING OFFICER. If the Senators will be silent for a moment, the vote will come on at 4 o'clock. The Chair will simply state the fact there has been more time allotted than the clock will allow.

Mr. PACKWOOD. I apologize to the Chair. Thank you very much.

The PRESIDING OFFICER. Now, who yields time?

Mr. DANFORTH addressed the Chair.

Mr. METZENBAUM. Mr. President, I think I have the floor.

The PRESIDING OFFICER. The Senator from Ohio does indeed have the floor.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I be permitted to yield to the Senator from Missouri for the purpose of making a parliamentary inquiry without my losing my right to the floor.

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

Mr. DANFORTH. Mr. President, I thank the Senator from Ohio.

The PRESIDING OFFICER. On whose time should that apply?

Mr. METZENBAUM. On the unexpired time. On the time of all the parties if we have time left.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. I yield 1 minute of my time to the Senator from Missouri.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Missouri.

Mr. DANFORTH. Mr. President, at the hour of 4 o'clock would a point of order be in order?

The PRESIDING OFFICER. It would.

Mr. DANFORTH. And would a point of order be in order at any time prior to 4 o'clock?

The PRESIDING OFFICER. It would not.

Mr. DANFORTH. So even if all time has expired and it is 4 o'clock, at that point a point of order would be in order but it would not be in order prior to 4 o'clock?

The PRESIDING OFFICER. That is correct.

Mr. DANFORTH. I thank the Chair and I thank the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, I ask unanimos consent that I be permitted to yield 3 minutes to the Senator from Nebraska and 3 minutes to the Senator from Minnesota, with the understanding that immediately thereafter, on my time, the Senator from Ohio would accorded recognition.

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. May I just inquire of the Senator from Oregon the reason for his objection? I have a number of questions that I hope to submit to you. About 1½ or 2 hours ago, I made them available to you and your staff. I have been trying to withhold asking those questions so that you might have time to prepare for the answers. Under the circumstances, I will just go ahead and ask the questions at the present time. The Senator can just say, "I don't have the answer," and that is perfectly agreeable. But the fact is that I am trying to be cooperative with the Senator from Oregon and am having difficulty achieving that objective.

□ 1440

Mr. PACKWOOD. The problem is that under the unanimous-consent agreement, there is about 5½ or 6 hours on your side and 1½ hours on ours, and I am not going to allow you to take the floor back whenever you want, and not be able to give time to some of my Members.

Mr. METZENBAUM. I just offered to give him equal time with the Senator from Nebraska. I offered 3 minutes to the Senator on your side and 3 minutes to the Senator on this side, on my time.

Mr. PACKWOOD. But then you want the time back, and if I have two or three Senators who want to speak, you have the time. So I object.

Mr. METZENBAUM. Then, Mr. President, I do not yield the floor, and I will continue.

I ask the Senator from Oregon if he can explain to me the item on page 73 of the bill which exempts a project of 250,000 square feet:

> . . . a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

The question I have is, what project is this? Is that all that has transpired—a memorandum of understanding signed after the House and the Senate passed the bill, or was it signed while it was in conference, and why is this project being afforded special treatment?

I yield 2 minutes to the Senator from Oregon, on my time, in order that he might respond.

Mr. PACKWOOD. This is another project that was put in by the House, paid for by the House, and did not violate any of the five or six principal rules we laid down with respect to passive losses. It is the Holland, MI project; it involves retail stores in the downtown area. There was a memorandum of understanding on the project executed with the city on July 2.

Mr. METZENBAUM. 1986.

Mr. PACKWOOD. 1986. It has been under development for some time, and it is consistent with other rules. The transition rule results in a $1 million revenue loss.

Mr. METZENBAUM. I ask the Senator from Oregon a question concerning a project in my own State—which of course does not make it right or wrong.

There is an insurance company in the southern part of the State known as the Western and Southern Life Insurance Co. They receive a $10 million benefit. That is described on page 799 of the bill, part of the so-called "Technical Corrections" title to the bill, making technical corrections for changes enacted in 1984. But the change is not technical at all. It gives

Western and Southern $10 million, and it is only fair to point out that that is over and above the amount that was given away to that same company in 1984 with a provision along the same line.

My question is, Why is this provision in the "Technical Corrections" part of the bill, and why is it in at all?

I yield 2 minutes of my time to the Senator from Oregon.

Mr. PACKWOOD. The bill amends a 1984 Act transition rule. The 1984 act imposed a new tax on mutual life insurance companies. The tax is based upon how much surplus a company has. The 1984 act had a transition rule for companies that had very large surpluses, so that the new tax would not hit them too hard right away.

Western and Southern Life Insurance Co., got such a transition rule. The rule did not give them the right amount of transition relief. The tax reform bill corrects the 1984 transition rule. Both the House bill and the Senate bill did it. The House, however, gave Western and Southern additional relief in conference. They wanted to add it, and they paid for it with their portion of the transition money.

Mr. METZENBAUM. I thank the Senator.

I would like to talk for a moment about the usage by the Senator from Oregon of the phrase that he has called upon a number of times today—that "they paid for it," meaning that the House paid for it out of its $2.3 billion. I think that is the correct number, and we had $1 billion to be allocated around.

The House did not pay for it. The Senate does not pay for it. The taxpayers of this country pay for it. Let us not kid ourselves. The people who are paying for these giveaways cannot be called "the House," cannot be called "the Senate." We do not pay for anything. We spend somebody else's money. We spend the taxpayers' money.

Everytime we give $10 million or $20 million or $200 million in a tax benefit to this company or that company, we are digging into the pockets of the rest of the taxpayers of this country and saying, "You've got to pay for it. It's your obligation to cover those costs."

For us to be talking about "They paid for it," in my opinion, is a misuse of the verb or maybe the pronoun. I guess it is the pronoun that is being misused. They did not pay for it. The taxpayers of this country paid for it. It is their money that is being spent, and do not ever kid yourself about that.

If we had $10 million more, we could expand day-care services for 40,000 poor children so that their mothers, who are on AFDC, could work, so that they could go out and earn money and get out of the poverty trap. $10 million! But you try to get some of my colleagues in this body to come up with that $10 million so that the mothers of 40,000 poor children, who are on AFDC, can get a chance to work and earn some money and get off poverty and be productive on their own. In no way can that occur.

So I say to my colleagues, do not tell me about the House paying for it or the Senate paying for it. The people paying for it are the taxpayers.

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

I ask my friend from Ohio: There are some of us who would like to make short statements with respect to the bill. I know that the Senator from Ohio has the right to the time and that the distinguished chairman of the Finance Committee has a right to some time. But I wonder if both would agree to allow Senators to speak about the bill. Some of us have not expressed our viewpoints on the floor, and we would release the floor. I see the Senator from Nebraska is here and perhaps others.

Mr. METZENBAUM. I have attempted to do that, and under the provisions I mentioned previously, I would still be willing to do it.

□ 1450

But absent that I intend to proceed forward.

Mr. BOSCHWITZ. As the Senator knows, he has roughly 40 minutes or so, and the Senator from Oregon has 30 minutes or so, and the Senator from here and there have 8 or 10 minutes, but at 3:30 p.m. Senator LONG is going to be recognized and then the opportunity for those of us who would like to speak a short time about the tax bill, about the general impression of what is right or wrong about the tax bill, will have evaporated.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I may be permitted to yield 3 minutes to the Senator from Minnesota, 3 minutes to the Senator from Nebraska and 3 minutes to any other Senator on the floor on my time provided at the conclusion of their remarks the Senator from Ohio be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BOSCHWITZ. I say to my friend from Ohio he is perfectly within his rights. As you can see he controls the time to 3:30 p.m., but then he will lose the floor under a preexisting agreement, but he will effectively preclude other Senators from speaking. Why can he not just allow Senators to go back and forth while he controls the time?

Mr. METZENBAUM. Mr. President, I wish to proceed forward.

Mr. President, I ask the Senator from Oregon that on page 85 of this bill Campbell Soup Co. in Pennsylvania and California is granted relief for "property or limited amount of property set forth in submission before September 16, 1986."

I am trying to say I do not understand what that provision means. I do not understand what property it is. I do not know what it means. I practiced law for a long time. I do not understand what it means "set forth in submission." Nor do I understand why Campbell Soup receives a benefit for that provision.

I am prepared to yield 2 minutes to the Senator from Oregon if he cares to respond.

Mr. PACKWOOD. A letter of submission is similar to the letter of the Senator from Ohio submitted about the Bowling Green bonds. It was a letter of submission from the Member identical to that of the Senator from Ohio, concerning a different project. It involves the Campbell Soup Co. That is what I mean by the letter of submission.

Mr. METZENBAUM. Talking about the letter from the Senator, is it the submission the Senator is talking about?

Mr. PACKWOOD. The provision is a House provision. The letter of submission we are talking about is the letter of submission that came from the House Member who requested the provision.

Mr. METZENBAUM. Would the Senator then be good enough to explain what is the property we are talking about and why did Campbell Soup receive that special consideration?

Mr. PACKWOOD. According to the information that was attached to the letter of submission, the board of directors had a master plan to put in equipment for certain facilities for modernization. They had not signed the contracts in time to meet the January 1, 1986, date, but the modernization plans had been underway since early 1985 and, therefore, they got the transition relief. It cost about $1 million.

Mr. METZENBAUM. I thank the Senator.

This is another example of what I consider going beyond the pale with respect to a transition rule. This is a transition rule that is predicated on the fact that the company had a master plan.

You know Mrs. Jones had a master plan to buy a home someday in the suburbs, but now she cannot deduct the interest if she goes to the bank under certain circumstances and makes a loan. I do not want to get into the details of that because I have not stated it accurately as I just related.

But the point I am making is Mrs. Jones, Mrs. Smith, and Mrs. Johnson, and all the other Mr.'s and Mrs.' of this country may have a master plan to do something with their lives, to

buy a car, and the interest is not deductible.

Do we have a rule that they intended to buy a car? Maybe we ought to have a provision, anybody who was thinking about or intended to buy a car should be exempt from the provision of this bill. Obviously, that would be absurd and I would be the last to support it.

But the fact is that is just as good as giving Campbell Soup the millions of dollars that are involved in this particular transition rule. I do not remember the exact dollars involved. But I know this; that there are substantial millions involved. Is the Senator from Oregon in a position to advise us as to the number of dollars?

Mr. PACKWOOD. $1 million.

Mr. METZENBAUM. $1 million. They are not going to break the Treasurer for $1 million, but why should we do this for Campbell Soup? Is Campbell Soup hurting? Is someone buying less tomato soup today than 5 years ago or last week or last month before the tax bill? No.

It is a plain gift and those are the kind of things that I object to as being included in this bill, notwithstanding the fact that I repeat I think overall it is a good bill and I am going to vote for it.

I would like to ask the Senator from Oregon another question. On page 279 of the bill he refers to Harza Engineering of Illinois. They are given special treatment. That engineering firm will be exempt from the new rule that requires most larger businesses to use accrual rather than cash.

To the best of my knowledge, that is the only company that is given that right in this entire bill.

So I have to say to the distinguished Senator from Oregon, why? I can tell him that there are literally hundreds of companies, hundreds of partnerships, hundreds of firms that are very much concerned about that new rule. I am not here to debate the merit or lack of merit of the rule but I am very concerned and very interested as to why Harza Engineering of Illinois was given that special treatment. I am prepared to yield 2 minutes to the Senator from Oregon if he is in a position to respond.

Mr. PACKWOOD. Yes. Harza Engineering is another transitional rule the House put in. If I had my druthers this is not one I would have put in to begin with in the Senate bill. The House put the transition rule in and allowed the engineering firm to change the current method of accounting, completed contract method, to cash. And this will settle a dispute with the Internal Revenue Service that did not allow them to do it.

Interestingly enough, it is generally consistent with the bill which allows the employee-owned engineering firms to use the cash method of accounting.

I do not know if Harza Engineering is employee-owned or not. But we did make that provision for employee-owned firms. We had this transitional rule requested in the Senate and we did not put it in.

Mr. METZENBAUM. Is the Senator from Oregon possibly mistaken. I am not saying he is. But the answer he gave sounded like the answer in reference to the problem in the matter of handling the Skidmore, Owings, Merrill situation. Are they both the same or is there some distinction? I think we had Skidmore, Owings, Merrill in the original bill and talked about it that time.

Mr. PACKWOOD. I am advised it is similar to the transitional rule for Skidmore, Owings, Merrill.

Mr. METZENBAUM. I see.

Mr. BOSCHWITZ. May I address my friend from Ohio once again?

The PRESIDING OFFICER. Does the Senator yield?

Mr. METZENBAUM. I do not.

Mr. BOSCHWITZ. May I address a question to the Senator from Ohio?

Mr. METZENBAUM. I yield 10 seconds to the Senator from Minnesota for the purpose of a question.

Mr. BOSCHWITZ. There are $10.6 billion of transition rules. When this Senator from Oregon went to the House there were $25 billion or $26 billion at the House. He has negotiated them down to $10 billion.

The PRESIDING OFFICER. The 10 seconds have expired.

Mr. BOSCHWITZ. May I have 10 additional seconds?

Mr. METZENBAUM. Without losing my right to the floor, I yield and ask unanimous consent that he may have 10 seconds.

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

Mr. BOSCHWITZ. The transition rules have to be seen in conjunction with roughly $5 trillion that is going to be collected over the period of this bill so that they are a fraction of 1 percent.

I would hope that rather then take up the balance of the time with transition rules that the Senator from Ohio would allow us to speak.

Mr. METZENBAUM. Mr. President, another question for my colleague from Oregon. I might say parenthetically——

Mr. BOSCHWITZ. Will the Senator respond? Does the Senator insist on maintaining the floor for the whole afternoon?

Mr. METZENBAUM. I was about to.

I say parenthetically that there was some question on the part of the Senator from Ohio and many others as well as to why we were going to rush passage of this bill.

The Senator from Minnesota is 100-percent accurate. The bill has to do with $5 trillion. We are talking about a long-range tax policy.

So I did inquire of the majority leader as to why the big rush before we had a chance to give it adequate study. The majority leader indicated, and I can appreciate his position and I do not take issue with it, that he was anxious to move along on this so he might get to the drug bill and then from the drug bill to get to the continuing resolution and such other matters that were within his responsibilities. I accept that.

Last night, many of us were on the floor seeking to get recognition. Earlier in the day I attempted to get recognition and was unable to do so and in the waning hours of the evening I could very easily have obtained recognition but it was not my feeling that that was the time to debate this bill. So as an accommodation and in an effort to be cooperative I said that I had a number of questions with respect to the transition rules and that I expected to get into those questions during the day.

As a consequence I was accorded 3 hours so that I might do that, and that is exactly what I have been doing.

I very much regret the fact I have not been able to yield 3 minutes to the Senator from Minnesota on my time and I appreciate his reasons for doing so, but the Senator from Oregon has seen fit to object and, therefore, I am just going to continue with my inquiries of the Senator from Oregon.

□ 1500

As part of the technical changes, IC Industries is handed a gift of $1 million. I think IC Industries used to be Illinois Central. It is afforded special treatment under the provision of the 1984 tax bill related to the tax treatment of foreign operations. The question I have: Is that a technical change? Is it not truly a substantive change? What public policy purpose is served by permitting Illinois Central to pick up $5 million in this?

Mr. President, I yield 1 minute to the Senator from Oregon so he might respond.

Mr. PACKWOOD. In the 1984 act, passive income earned by the Netherlands Antilles Co. was placed in what we call a separate basket. The result of this is that the company gets a smaller foreign tax credit. The transition rule provides that the foreign tax credit is available for passive income earned before 1984. This income was earned before 1984 and, therefore, the 1984 law applies.

The reason we gave it to only one company is only one company asked. The IRS actually directs that pre-1984 law applies to pre-1984 tax credits.

Mr. METZENBAUM. I again point out that I see no basis for this as a transition rule. I have difficulty in comprehending why IC Industries would get this special treatment, and

particularly in view of the fact it has to do with their Netherlands Antilles operation. I, myself, think it does not make good policy and should have not been done. I am not going to belabor the point.

Mr. President, I am not going to continue to ask about each of these because there are other Members seeking recognition, and I certainly want to accord them an opportunity to have that recognition.

I might say, before concluding on the question of individual questions, I had asked previously about the retention on capital gains treatment for the sales of dairy cattle under milk production termination and asked for whom that amendment was offered and whether it was small family farmers or large corporations and the "why" of that amendment. Is the chairman of the Finance Committee in a position to respond to that inquiry at the present time?

I yield 1 minute to the chairman without losing my right to the floor.

Mr. PACKWOOD. I am unable to find out specifically who that applies to.

Mr. METZENBAUM. Would the Senator from Oregon be willing to place that in the RECORD as soon as he can?

Mr. PACKWOOD. Yes, I would be happy to do that, if I find out.

Mr. METZENBAUM. I thank the Senator.

There are many more rules, special exemptions which should be described—the Royal Worcester Corset Factory, the New England Patriots, the Hoover Dam, the Seabrook Nuclear Powerplant, and many, many, many more. What bothers me, I repeat, is the fact that we cannot find all the answers. And I do not know if we will ever find all the answers. There are too many; there is too much; it is too difficult to find the answers.

I do not believe this is a way to legislate. I believe the overall tax bill is good. But I do not believe that being presented with 400 special exceptions that were not in either the House or the Senate bill and that we suddenly learn about the night before last at 6 o'clock, I do not believe that is right.

I do not have any intention of standing in the way of the passage of the bill. But I want it clearly understood that this is not a proper way to legislate. And I do not say that in any way to denigrate the excellent work that the chairman of the Finance Committee has done. I say it as a general policy for the U.S. Senate and the U.S. House of Representatives. I say it in reference to what the people of the United States think about those of us who hold public office.

There is not any basis and it is not logical to take care of a select few and call those select few provisions that are under the transition rules. Many others are left at the wayside. They did not have proper spokespersons. They did not have a loud voice. They did not have a lobbyist.

I believe that this bill should be enacted, but I hope that this is the last time that we will see legislation brought to the floor involving a package of $10.6 billion when few, if any, of us really know what is in that package.

Mr. President, how much time does the Senator from Ohio have remaining?

The PRESIDING OFFICER. The Senator from Ohio has 16 minutes and 24 seconds remaining.

Mr. METZENBAUM. Mr. President, I yield 3 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. EXON] is recognized.

Mr. EXON. Mr. President, there has been a great deal of hard labor in arriving at this revolutionary change in the Tax Code that is long overdue. And I compliment those who have been involved.

This is especially true in the areas of abuses and loopholes in the Tax Code, such as passive investment, tax shelters, and permitting large corporations with huge profits to escape from any tax liability and other abuses. In my view the bill before us is essentially revenue neutral for agriculture, with its primary shortcoming in this area the elimination of income averaging, after we have tried very hard and put that into the Senate version of this bill.

There are all kinds of estimates as to what the redistribution will be among individual taxpayers that will follow the massive shift of revenue obligation to the Federal Government. Some will gain handsomely and some will lose.

There are many changes incorporated in the bill that have my enthusiastic support.

On the negative side, I am not convinced one should support this change with an understanding that it is significant "tax simplification." I have listened with great interest to the informative debate, pro and con, and am convinced that the "safe vote" is to support the measure, as there are some convincing arguments that have been made that the best interests of the country will be advanced. And I support my knowledgeable colleagues who have so stated that.

But that is not the way my vote will be cast, with all due respect to those who have crafted this measure.

My final judgment on this important matter was reached within the hour, and statements by Senator DANFORTH and Senator LEVIN on yesterday probably influenced my upcoming opposition more than anything else.

The main problem with this measure is that it will, in my best judgment, cause an overall net reduction in revenue and thereby drive the country further toward the brink of potential economic disaster. All other things aside, good or bad, this measure very likely will tighten the noose further around the throat of American economic viability in these times of skyrocketing deficits and exploding national debt.

As a fiscal conservative willing to stand against the swelling tide and tales of "all is well," notwithstanding the SOS economic signals that engulf us, I object.

As bad as the current Tax Code is and as much as it needs changing, the change in this form that is at best "revenue neutral" and more probably a revenue "shortfall" is not the right course.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I yield 5 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. BOSCHWITZ. I thank my friend from Oregon.

I would start off by saying that, while I do not like all of the transitional rules that my friend from Ohio speaks about, I think that, overall, they really are insignificant. As I pointed out, they are just a very small fraction of 1 percent of the overall revenues that this bill is going to deal with. And, as my friend from Ohio said, he understood including rules where "they were on their way on the project, that kind I understand," he said. For example, in speaking about the Willard Hotel, he said, they "used the old law and then couldn't continue." Most of the transition rules deal with just that type of situation.

As a matter of fact, there are many, many billions of dollars of preferences that can no longer be used where people started under old rules.

Mr. President, prior to coming here I was an entrepreneur. As I look at this bill as an entrepreneur and switch my hat from the Senate back to my business hat, if this bill had been in effect when I started in business, I think that I would have started even more quickly and more aggressively. In short, I think that this bill will indeed add to the entrepreneural spirit of Americans, it will cause the creation of new jobs, and it will create new enterprise when a person can keep 72 percent of what he or she earns.

□ 1510

When a person can keep 72 percent of what they earn, that indeed is an incentive. That is the very root of this bill. The same goes for business. Some of my colleagues say businessmen,

whether they be in capital intensive or other businesses, are going to be somehow disadvantaged.

I would point out that the people who run those businesses and the people who are going to get the additional bonuses are going to find that their income is taxed at only 28 percent, and that indeed will be an incentive for them to move forward. That is what the tax bill is supposed to do—provide incentives. This bill does.

So the fact that there is some shifting to new business, not something that I would particularly have approved of, nevertheless I do not think it is going to be debilitating to the people who run those businesses. They are going to be subjected only to a 28-percent maximum rate. They will indeed have the incentive to proceed.

Some of my friends tell me the rents are going to go up. So I went out, I talked with my son, and said this is a time we ought to buy some buildings. But everybody in the real estate business says wait, the price of buildings are going to go down. If the price of buildings is going to go down, then rents are going to go down whether it is because of the longer depreciation periods or whatever. But it is an inconsistency to say rent is going to go up while the real estate value is going to go down.

My principal concern about the bill is capital formulation, long-term gain. So I will be introducing legislation so that for longer holding periods of 1 year and 3 years, there will be lower rates on capital gains.

I think the dual rates of 15 and 28 percent are just terrific. I know my friend, the Senator from Maine, Senator MITCHELL, says there should be a higher rate. That would be fine if people in the higher rate and higher incomes were paying them. But I think history shows if you are making over $200,000 that indeed you know how to protect your tax situation, and people were not paying those rates. Every time we have lowered taxes, we have found that people in the highest brackets indeed become taxpayers, become larger taxpayers. That is the other appealing part of the bill. It makes taxpayers out of everybody. It broadens the base and it gives incentives. I think it is a terrific tax bill.

I congratulate my friend from Oregon and all those who are part of getting this bill to this point.

I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I know the Senator from Ohio wants to make an insertion into the RECORD, and I will be happy to yield 30 seconds for that purpose without losing my right to the floor.

Mr. METZENBAUM. Mr. President, I ask unanimous consent there be included in the RECORD tax reform transition rules, and the new House and Senate transition rules, the final list.

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

TAX REFORM TRANSITION RULES

ACRS ITC: RULES IN SENATE BILL

Company, location, and revenue loss:

1. RCA satellites (I-77), New Jersey—Princeton (HQ), 1 million.
2. Gilbertine Power, Pennsylvania.
3. Philadelphia Solid Waste (gen.), Pennsylvania—Philadelphia, 13 million.
4. Chester Solid Waste (I-79), Pennsylvania—Chester, 22 million.
5. Allegheny Electric Co-op., Pennsylvania, 10 million.
6. Hydro Corp. of Penn. (gen.), Pennsylvania, 1 million.
7. Philadelphia Electric (I-84), Pennsylvania—Philadelphia, 113 million.
8. COMSAT satellites (I-77), District of Columbia (HQ), no loss.
9. Eastern Utilities (I-71), Massachusetts—Boston (HQ) (Burrillville, RI plant), 12 million.
10. Federal Express Satellites (I-77), Tennessee—Memphis (HQ), 1 million.
11. Long Lake Energy (I-69), New York City (HQ) (23 projects), 23 million.
12. CF Industries (I-72), Louisiana—Donaldsonville, 0 loss.
13. New Orleans Saints (I-78), Louisiana—New Orleans, 1 million.
14. Cajun II Generating (I-78), Louisiana—Baton Rouge, 75 million.
15. Edison Chouest (I-79), Louisiana—Galliano, 1 million.
16. Eastbank Wastewater (I-76), Louisiana—Jefferson Parish, 2 million.
17. Williams Co. fiber optics (I-69), 6 million.
18. Telocator (I-77), 9 million.
19. Teleconnect (I-72), 1 million.
20. Temple Eastex (I-77), Texas—Diboll, 22 million.
21. Greenriver Laundry Plant (I-79), Wyoming, 1 million.
22. Pan Am (I-84 generic), 26 million.
23. Delta Airlines (I-84 gen.), Georgia—Atlanta (HQ), 46 million.
24. Greenbrier Leasing (I-72), Oregon—Portland, 5 million.
25. Texas Air (I-84 generic), 10 million.
26. Northwest Orient Airlines (I-84 gen.), Minnesota—St. Paul (HQ), 61 million.
27. Lake Superior Paper (I-71), Minnesota—Duluth, 29 million.
28. Hellsgate Hydroelectric (gen.).
29. Enesco (gen.), Missouri—St. Louis (HQ) (Sheridan, Penn. project), 11 million.
30. Sverdrup (gen.), Missouri—St. Louis (HQ), 1 million.
31. Kaiser Power (I-77), Colorado—Colorado Springs (HQ) (Sunnyside, Utah & York Canyon, New Mexico projects), 17 million.
32. Applied Energy (I-84), 29 million.
33. Brooklyn Navy Yard (I-77), New York—Brooklyn, 9 million.
34. Brooklyn Renaissance (I-80), New York—Brooklyn, 3 million.
35. Riverwalk (I-80), New York City, 9 million.
36. Carnegie Hall (I-80), New York City, 4 million.
37. Audobon Research (I-80), New York City, 2 million.
38. Viacom (generic-rep. lang), New York City (HQ), 1 million.
39. 2 wood energy projects (I-80), Maine, etc.—projects listed, 7 million.
40. Great Northern Nekoosa (I-71), Maine—Millinocke, 16 million.
41. Owings Mills project (I-67), Maryland—Owings Mills, 9 million.
42. Riverwalk project (I-67), Louisiana—New Orleans, 5 million.
43. Norlight, Minnesota/Wisconsin, 4 million.
44. Dineh Power (I-78), New Mexico, 119 million.
45. Agri-Beef (I-69), Idaho—Boise (HQ).
46. 62 Montona hydro projects (covered under generic), Montana—statewide, 68 million.
47. Dulles Rapid Transit (I-78), Metro D.C. Area, 6 million.
48. Times Square Redevelopment, (I-67), New York City, 27 million.
49. Capital District Energy (I-79), Connecticut—Hartford, 1 million.
50. GM Special Tools (deleted), Michigan—Detroit (HQ 44 million).
51. Mississippi Chemical (I-71), Mississippi, 20 million.
52. North Coast Cable (rep. lang), Ohio, 1 million.
53. West Virginia Flood Relief (I-85), West Virginia—statewide.
54. Foster-Wheeler Cogen, Pennsylvania.
55. Fieldcrest Mills (generic), Georgia.
56. Baltimore Gas & Electric (I-84), Maryland—Brandon Shores, 11 million.
57. Steel industry cash—out (I-90), nationwide, 400 million.
58. Farm industry cash-out (I-92), nationwide, 200 million.

ACRS/ITC: RULES IN HOUSE BILL AND HOUSE AND SENATE BILLS

Company, location, and revenue loss:

1. New York Coliseum (I-66), New York City, no loss.
2. Harborplace (I-66), Baltimore, Maryland, 10 million.
3. Pioneer Place (I-66), Portland, Oregon, 6 million.
4. Bayside (I-66), Miami, Florida, 6 million.
5. Westlake (I-66), Seattle, Washington, 5 million.
6. Jacksonville Landing (I-66), Jacksonville, Florida, 3 million.
7. Atlanta Underground (I-67), Atlanta, Georgia, 7 million.
8. Phillips/Pt. Arguello (I-69), Pt. Arguello, California, 59 million.
9. Valley View Energy (I-78), Texas, 38 million.
10. United Telcom (I-69), Kansas City, MO, 234 million.
11. MCI (I-69), 34 million.
12. Alcoa (I-70), Tenn., Iowa, & Indiana plants, 31 million.
13. PPG (I-70), 5 facilities, 4 million.
14. Pacific-Texas Pipeline (I-70), Los Angeles to Midland, TX, 187 million.
15. Cox Broadcasting (I-72), Georgia, 1 million.
16. Multimedia (I-70), 1 million.
17. New England/Hydro-Quebec (I-71), Can. border to Massachusetts, 21 million.
18. Merrill Lynch Center (I-75), New York City, 4 million.
19. Columbia Point, Boston, Massachusetts, 8 million.
20. Sonat Offshore Drilling (I-75), Louisiana, 1 million.
21. Mitex, Inc. (generic), 10 million.
22. Archbald Power, Pennsylvania, 9 million.
23. Chrysler-Mitsubishi (I-78), Illinois, 58 million.

24. Walt Disney/MCA (I-89), 65 million.
25. Quonset Point (generic), Rhode Island.
26. Gilberton Power, Pennsylvania, 26 million.
27. Conemaugh Hydro (gen.), Pennsylvania, 9 million.
28. Cogen Technologies, Iowa, 25 million.
29. Hennepin Solid Waste (generic), Minnesota, 4 million.
30. Texas City Cogen, 29 million.
31. Vidalia Hydro, Louisiana, 94 million.
32. New York Transit Auth. (I-69), New York City.
33. Bangor Solid Waste (generic), Maine, 11 million.
34. Florida Solid Waste (generic), Florida, 8 million.
35. Rialto Tire Burning (generic), California, 2 million.
36. New York Solid Waste, (generic), New York, 140 million.
37. Kern River Pipeline (I-75), California, 129 million.
38. San Diego Resource Recovery, California, 11 million.
39. Catalyst Energy Dev.
40. Arkansas Electric, Arkansas, 28 million.
41. Alabama Electric, Alabama,
42. Ponderay Newsprint, Washington. 18 million.
43. Kysor Industrial (I-77).
44. Tri-Cities Sewage Tr. (I-75),
45. Ashland Coal (I-73), West Virginia.
46. Inland Steel, Pennsylvania.
47. New Martinsville Hydro (generic), 21 million.
48. Sofar Hydro (generic), 72 million.
49. Sohio Endicott (I-72), Alaska, 77 million.
50. Semass Partnership, Massachusetts, 11 million.
51. Hellsgate Hydro (gen.), Colorado.

RAPID AMORTIZATION: RULES IN THE HOUSE BILL AND/OR HOUSE AND SENATE BILLS

Company, location, and revenue loss:
1. Lincoln Life Housing, Indiana.
2. Denver & Rio Grande Railroad (I-85), Colorado, Utah, less than $5 million.

REHABILITATION TAX CREDITS: RULES IN SENATE BILL

Company, location, and revenue loss:
1. Mount Vernon Mills, South Carolina—Columbia, 1 million.
2. Charleston Waterfront, South Carolina—Charleston, 2 million.
3. Barbara Jordan II Apts., Rhode Island—Providence, 1 million.
4. The Tides, Rhode Island—Bristol, 1 million.
5. Outlet Building, Rhode Island, 1 million.
6. Kiel Auditorium, Missouri—St. Louis, 12 million.
7. Debaliveriere Arcade, Missouri, 1 million.
8. Drake Apartments, Missouri, 2 million.
9. Hayber Development, Minnesota—Minneapolis, 4 million.
10. Strawberry Square, Pennsylvania—Harrisburg, 2 million.
11. North Pier Terminal, Illinois—Chicago, 12 million.
12. New Hampshire Post Office, New Hampshire—Manchester, 1 million.
13. Commercial National Bank, Louisiana—Shreveport, 2 million.

REHABILITATION TAX CREDIT: RULES IN HOUSE BILL AND/OR HOUSE AND SENATE BILLS

Company, location, and revenue loss:
1. Warehouse Row, Tennessee.
2. Central Avenue Hist. District.
3. Union Station, District of Columbia, 1 million.
4. Upper Pontabla Bldg. (I-108), Louisiana, 2 million.
5. Hot Springs Nat. Park (I-108), Arkansas.
6. Frankford Arsenal (I-108), Pennsylvania.

CORPORATE & MINIMUM TAX: RULES IN SENATE BILL

Company, location, and revenue loss:
Corporate (NOL Carryforwards):
1. Pennzoil (I-193), Texas—Houston (HQ), 9 million.
2. Mannsville (I-193).
Minimum Tax:
1. Control Data (I-274), 25 million.
Energy:
1. North Sea Oil (I-150).

NOL's AND MINIMUM TAX: RULES IN THE HOUSE BILL AND/OR HOUSE AND SENATE BILLS

Company, location, and revenue loss:
NOL Carryforwards:
1. LTV Corporation (I-194), Pennsylvania.
2. Fuqua Industries (I-194).
3. Berry Holding Co. (I-194).
4. Talman Savings & Loan (I-194).
5. Pennzoil (I-193), Houston, Texas.
Minimum Tax:
1. Commonwealth Edison (I-275), Illinois.

FOREIGN TAX ISSUES: RULES IN SENATE BILL

Company, location, and revenue loss:
1. General Mills (I-467), Minnesota, 9 million.
2. Navy Ships (I-480), 45 million.
3. Chanel (I-499), 12 million.
4. Texaco (I-488), Harrison, NY, 85 million.
5. Avon (I-489), New York City, 50 million.
6. Phillips Petroleum (I-488), Bartlesville, OK, 31 million.

FOREIGN TAX AND ACCOUNTING: RULES IN HOUSE BILL AND/OR HOUSE AND SENATE BILLS

Company, location, revenue loss:
Foreign Tax:
1. Esselte Business Systems (I-484), New York.
2. Murphy Oil (I-488), Arkansas, 5 million.
Accounting:
1. Dominion Properties (I-301).

ACCOUNTING: RULES IN SENATE BILL

Company, location, and revenue loss:
1. General Development (I-301), Florida, 11 million.
2. Phillips Petroleum, 20 million.
3. John Deere, 212 million.
4. Rouse Corp. Projects (I-288), Portland, OR; New Orleans, LA; Jacksonville, FL; Miami, Fl; Baltimore, MD; Owings Mills, Md. 10 million.
5. Skidmore, Owens, 10 million.
6. Times Square, New York City, 15 million.
7. Alaska Pipeline (I-288), Alaska.

BONDS: RULES IN SENATE BILL

Company, location, and revenue loss:
1. University of Delaware (I-649), Delaware, no loss.
2. Pitt, Temple, & Lincoln (I-649), Pennsylvania, no loss.
3. Mid-Columbia Power (I-649), Washington, 28 million.
4. Bonneville Power (I-594), Washington.
5. Underground Atlanta (I-648), Georgia—Atlanta, 7 million.
6. PASNY (I-617), New York, 64 million.
7. Miami Airport (I-618), Florida—Miami, 14 million.
8. Philadelphia Solid Waste (I-617), Pennsylvania—Philadelphia, 15 million.
9. Riverplace Project (I-618), Minnesota—Minneapolis, 4 million.
10. Portland Convention Center (I-660), Oregon—Portland, 14 million.
11. Providence Convention Ct., (I-633), Rhode Island—Providence, 6 million.
12. Minneapolis Retail Complex (I-629), Minnesota—Minneapolis, 6 million.
13. Kiel Auditorium (I-634), Missouri—St. Louis, 6 million.
14. New Orleans Conv. Center (I-634), Louisiana—New Orleans, 11 million.
15. Albany Convention Center (I-650), New York—Albany, 4 million.
16. Orange County Conv. Center (I-635), Florida—Orlando, 13 million.
17. St. Louis Stadium (I-623), Missouri—St. Louis, 16 million.
18. Arrowhead Stadium (I-623), Missouri—Kansas City, 3 million.
19. Superdome (I-624), Louisiana—New Orleans, 2 million.
20. Tiffany Lanes (I-624), Louisiana—Lafayette, less than $1 million.
21. Astrodome (I-624), Texas—Houston, 5 million.
22. Buffalo Stadium (I-624), New York—Buffalo, 2 million.
23. Atlanta Stadium (I-625), Georgia—Atlanta, 16 million.
24. Baltimore Stadium (I-625), Maryland—Baltimore area, 16 million.
25. Phoenix Sports Complex (I-625), Arizona—Phoenix, 16 million.
26. Isle of Wight Facility (I-625), Virginia—Hampton Roads, 16 million.
27. Pioneer Place (I-636), Oregon—Portland, 3 million.
28. Portland Old Town (I-636/2), Oregon—Portland, 1 million.
29. Philadelphia Airport Hotel, Pennsylvania—Philadelphia, 4 million.
30. Portland Urban Renewal (I-632), Oregon—Portland, 7 million.
31. Riverfront Science Park (I-629), Oregon—Eugene, 3 million.
32. Manhattan UDAG project (I-629), Kansas—Manhattan, 3 million.
33. Denver Downtown (I-630), Colorado—Denver, 5 million.
34. South Pointe (I-630), Florida—Miami Beach, 32 million.
35. Grand Gulf Power (I-620), Mississippi, no loss.
36. Delaware Power & Light (I-620), Delaware, 16 million.
37. Duke Power (I-620), 2 million.
38. Ball Corporation (I-620), (projects in CO, NY, OH, & VA), 1 million.
39. Upper Pontalba Building (I-640), Louisiana—New Orleans, less than $1 million.
40. Ben Tillman Project (I-640), South Carolina, 1 million.
41. Mishoe Towers (I-640), Delaware, less than $1 million.
42. Poplar Hill (I-640), Delaware, 1 million.
43. Hawaii Multifamily Projects (I-641), Hawaii—statewide, 19 million.
44. Arrowhead Springs (I-642), California—Arrowhead Springs, 28 million.
45. Dulles Rapid Transit (I-647), Metro D.C. Area, 19 million.
46. Dallas Rapid Transit (I-647), Texas—Dallas, 16 million.
47. Oregon Hospitals (I-648), Oregon—statewide, 7 million.
48. Philadelphia Conv. Ctr. (I-617), Pennsylvania—Philadelphia, 17 million.

49. Philadelphia Trash-to-Steam (I-617), Pennsylvania—Philadelphia, 15 million.
50. Birmingham Sinking Fund (deleted—not needed), Alabama—Birmingham, no loss.
51. Kansas Private Colleges (I-647), Kansas—Olathe, 8 million.

BONDS: RULES IN HOUSE AND/OR HOUSE AND SENATE BILLS

Company, location, and revenue loss:
1. Oregon Vet. Dept., Oregon.
2. Texas Vet. Land Bonds, Texas.
3. Little Rock dock-wharf (I-619), Arkansas.
4. Pacific-Texas Pipeline, Los Angeles to Midland, TX.
5. Aloha Tower (I-619), Honolulu, 16 million.
6. Charleston dock/wharf (I-619), South Carolina.
7. Arkansas Nuclear #1 (I-620), Arkansas.
8. Charlotte Poll. Control, North Carolina.
9. Cleveland Stadium (I-622), Ohio.
10. Miami Dolphins Stad. (I-622), Florida.
11. Chicago White Sox Stad. (I-622), Illinois.
12. Memphis Sports Facil. (I-623), Tennessee.
13. Hudson Co. Stadium (I-623), New Jersey.
14. New York University, New York.
15. Georgetown University, District of Columbia.
16. Vanderbilt Univ., New York.
17. Stanford Univ., California.
18. Albany Med. Center, New York.
19. St. Luke's Hospital, New York.
20. St. Francis Hospital, New York.
21. Pittsburgh Airport, Pennsylvania.
22. Overton Park West, Miami, Florida.
23. Chicago North Loop (I-628), Illinois.
24. Chicago South Loop (I-628), Illinois.
25. Chinatown (I-629), Chicago, Illinois.
26. Haymarket, Chicago, Illinois.
27. St. Louis Conv. Center (I-633), Missouri.
28. Akron Convention Center (I-633), Ohio.
29. Miami Beach Conv. Ctr. (I-633), Florida.
30. San Jose Conv. Ctr. (I-633), California.
31. San Fran. Conv. Ctr. (I-633), California.
32. Oklahoma Turnpike (I-639), Oklahoma.
33. Nassau Co. Heating, New York.
34. Hudson Co. (I-623), New York.
35. Memphis Parking, Tennessee.
36. Univ. of S. Carolina, South Carolina, 1 million.
37. Anchorage Pension Bonds (I-645), Alaska.
38. Berkeley Pension Bonds (I-645), California.
39. South Dakota Pen. Bonds (I-645), South Dakota.
40. Columbia Point, Boston, Massachusetts.
41. Eugenie Terrace.
42. Tennessee Student Loans (I-645), Tennessee.
43. Calif. Student Loans (I-639), California.
44. Ind. Solid Waste (gen.), Indiana.
45. San Joaquin Water, California.
46. Rhode Island Housing, Rhode Island.
47. Los Osos Sewage, California.
48. New York Hospitals, New York City.
49. Duke Power, North Carolina, 2 million.

PENSIONS: RULES IN SENATE BILL

Company, location, and revenue loss:
1. Paddock Press/Chicago Sun Times, Illinois—Chicago, negligible loss.
2. Fairbanks Newspapers, Alaska—Fairbanks, negligible loss.
3. Peoria Star Journal, Illinois—Peoria, 4 million.
4. Colt Industries (P-834), negligible loss.
5. Avondale Corporation, negligible loss.
6. C&S Groceries, Vermont, negligible loss.
7. Louisiana ESOP's, Louisiana.
8. Phillips Petroleum (I-418), 75 million.

AT-RISK: RULE IN SENATE BILL

Company, location, and revenue loss:
1. 3-River Stadium (I-168), Pennsylvania—Pittsburgh, less than $5 million.

INSURANCE: RULE IN SENATE BILL

Company, location, and revenue loss:
1. Capital Holding Co. (I-322), Kentucky.

INSURANCE: RULES IN HOUSE BILL AND/OR HOUSE AND SENATE BILLS

Company, location, and revenue loss:
1. Mutual of America (I-327).
2. TIAA-CREF (I-327).
3. Hill Country Life (I-327/8).0

NEW HOUSE AND SENATE TRANSITION RULES—FINAL LIST

ACRS/ITC

1. Temple Inland—$3m—Evandale & Orange, Texas.
2. Electro/Mold—no loss—Minneapolis, MN—p. I-82.
3. Satellite Industries, Inc.—negligible loss—Mpls., MN.
4. Peat Products—$1m—Maine—p. I-84.
5. Super Key Market—negligible loss—Kentucky—p. I-83.
6. Bethel Cogen—negligible loss—Maine.
7. Back Bay Tower—$1m—Maine.
8. Eastman Place—$1m—Rochester, New York.
9. Marquis II Project—no loss—Georgia.
10. Mid-Coast Marine—$1m—Coos Bay, Oregon—p. I-83.
11. Biogen Power—$9m—Rillito, Arizona—p. I-85.
12. Lodging property—no loss—Iowa—p. I-82.
13. Brammer Manufacturing Co.—no loss—Davenport, Iowa—p. I-82.
14. Lynmer Manufacturing—no loss—Pennsylvania—p. I-82.
15. Weyerhauser—$6m—North Carolina—p. I-85.
16. Duke Power—Bad Creek, North Carolina—p. I-85.
17. Kenosha Harbor—$2m—Kenosha, Wisconsin—p. I-82.
18. Point Gloria—$1m—Massachusetts—p. I-82.
19. Lakeland Park Phase II—no loss—Baton Rouge, LA—p. I-82.
20. Santa Rosa Hotel—$1m—Pensacola, Florida—p. I-82.
21. Esplanade Village—no loss—New Orleans, Louisiana.
22. Sheraton Baton Rouge—$2m—Baton Rouge, LA—p. I-82.
23. RCI Corp.—$2m—Rochester, New York—p. I-74.
24. Kansas City Southern Fiber Optics—$4m—10 States—p. I-83.
25. Hardage Enterprises—$6m—p. I-85.
26. Brown & Brown—no loss—Salina, Kansas—p. I-82.
27. Koch—Rosemont, Minnesota refinery—$7m.
28. General aviation aircraft—$27m—4 States—p. I-76.
29. Nichols boat—$9m—Whidbey Island, Washington.
30. Kennecott Copper—$28m—Salt Lake City, Utah—p. I-73.
31. Trolley Square—$1m—Utah—p. I-83.
32. Pullman Leasing—$1m—Illinois—p. I-83.
33. Rumford Cogen/Boise Cascade—$27m—Idaho—p. I-82.
34. Coeur D'Alene Mines—$2m—Idaho—p. I-73.
35. Media General—$1m—p. I-85.
36. Myrtle Beach—$1m—Myrtle Beach, SC—p. I-83.
37. Brendle's, Inc.—no loss—South Carolina—p. I-83.
38. Bristol Project—no loss—Bristol, RI—p. I-83.
39. SouthernNet fiber optics—$3m—Virginia—p. I-83.
40. Sierra Pacific—$23m—Nevada—p. I-82.
41. Reading Anthracite—$43m—Pennsylvania—p. I-83.
42. Atlantic Richfield—$5m—Alaska—p. I-73.
43. Mesa Airlines—negligible loss—New Mexico—p. I-85.
44. Cargill-Northstar Steel—$3m—Ohio—p. I-81.
45. Mesaba Airlines—$1m—South Dakota—p. I-76.
46. Sixth and Broadway Project—no loss—Iowa—p. I-80.
47. Northwestern National Life Insurance of Minneapolis—$1m—p. I-79.
48. Flushing Center—$5m—New York.
49. Southeastern Michigan Sports Stadium (Auburn Hills Arena)—$2m—p. I-78.
50. S.S. Admiral—$7m—Missouri—p. I-79.
51. Harbert/Infilco Degremont, Inc. (Harlington Wastewater)—Texas—p. I-76.
52. Fort Howard Paper Company—$39m—Georgia—p. I-72.
53. Central Gulf Lines—$8m—Louisiana—p. I-79.
54. Monsanto (3 projects)—$2m—Missouri—p. I-74.
55. Greenville, South Carolina Wastewater Treatment Plant—$3m—p. I-76.
56. Delaware Otsego—$1m—p. I-78.
57. Crown Cork & Seal—$5m—Mississippi.
58. International Paper—$14m—p. I-72.
59. Covington Riverfront Project—$2m—Kentucky—p. I-80.
60. Manchester, New Hampshire Solid Waste—$3m.
61. Mountain View Apartments—No loss—Mass.—p. I-82.
62. Morgan Guaranty Trust Co. Wall Street Building—$32m—New York City—p. I-81.
63. Chrysler Belvidere & St. Louis plants—$78m—Illinois and Missouri—p. I-71.
64. Peabody Place—$5m—Tennessee—p. I-78.
65. Ultrasystems-Ogle and TEORCO—$14m—California—p. I-81.
66. Park Forest/Town Center Redevelopment—$1m—Illinois—p. I-68.
67. Dexter Corporation Cogeneration Facility—$8m—Conn.—p. I-77.
68. Eugenie Terrace—$4m——Illinois—p. I-81.
69. Brockton, Mass. magnetic resonance imaging clinic—no loss—p. I-82.
70. Mendota Biomass Power Project—$3m—Calif.—p. I-82.
71. Drexel Burnham Office Building—$20m—New York—p. I-75.
72. Honey Lake alternative energy project—$1m—California—p. I-81.
73. Derry, NH waste-to-energy project—$2m—p. I-83.

74. Burbank Manors—negligible loss—Illinois—p. I-84.
75. Los Angeles solid waste disposal project—$5m—Calif.—p. I-83.
76. Oxford Place—$1m—Tulsa, Oklahoma—p. I-83.
77. St. Charles, MO Mixed-use Center—$4m—p. I-83.
78. Illinois Diversatech Campus—$20m—p. I-83.
79. Navistar—$2m—Illinois—p. I-83.
80. Zimmer Coal Plant—$71m—Ohio—p. I-84.
81. Ponderay Newsprint Co.—$7m—Washington—p. I-85.
82. Presidential Airlines—$7m—VA, SC—p. I-85.
83. Standard Telephone Company—no loss—VA—p. I-85.
84. Ann Arbor Railroad—No loss—Michigan—p. I-85.
85. Ada, Michigan Cogeneration—$5m—p. I-85.
86. Anchor Store Project—$2m—Michigan—p. I-85.
87. East Bank Housing Project—negligible loss—Michigan—p. I-85.
88. Wurzburg Block Redevelopment—$2m—Michigan—p. I-74.
89. Legett and Platt—$2m—Missouri—p. I-85.
90. Folz Corp.—no loss—New York—p. I-84.
91. Grand Rapids, Michigan arena project—$2m—p. I-85.
92. Campbell Soup Company—$12m—PA & CA—p. I-85.
93. U.S. Trust (Boston bank)—$1m—Mass.—p. I-81.
94. Harlem Third World Trade Center—$6m—New York—P. I-69.
95. Overton—$4m—Florida—p. I-85.
96. El Monte, California Busway Terminal—$1m—p. I-74.
97. Muskegon Ferry—$1m—Michigan.
98. SS Monterey—$8m—New Jersey—p. I-80.
99. Steel rule modification (LTV)—no loss—p. I-91.
100. Holland, Michigan Holland Center—$1m—p. I-73.
101. McLouth steel—$1m—p. I-92.
102. Spray Cotton Mills—neg. loss—Eden, NC—p. I-85.
103. Riverside Cogeneration—$8m.
104. Waveland Project—$5m—Illinois—p. I-81..
105. Ormesa II—$1m—p. I-80.
106. Angelus Plaza—$2m—Los Angeles, California—p. I-85.
107. Saturn—$70m—Tennessee—p. I-90.
108. Madison Square Garden—$7m—New York—p. I-67.
109. Conyers Wastewater Plant—Georgia.
11o. Oklahoma State University Project.
111. Strathmore Paper Co.

ACCOUNTING

1. Barbara Jordan II Apartments—$1m—Providence, RI—p. I-288.
2. New Jersey emergency hookups of water systems—$3m—p. I-306.
3. Metro—$23m—D.C. area—p. I-307.
4. OTASCO—$22m—California & Oklahoma—p. I-302.
5. Royal Worcester Corset Factory—no loss—Mass.--p. I-289.
6. Integrated Resources—$43m—New York—p. I-279.
7. Caterpillar—$35m—Illinois—p. I-288.
8. Whole Herd Buyout—$22m—Nebraska & California—p. I-148.
9. Bear Stearns—$8m—New York & California—p. I-307.
10. Seagrams—New York—p. I-303.

CORPORATE

1. Paramount Cards—$7m—p. I-758.
2. Heritage Communications (Gen. Util.)—Des Moines, Iowa—p. I-208.
3. Banks of Iowa (Gen. Util.)—$7m—p. I-208.
4. Ideal Basic Industries (NOL)—no loss—Denver, Colo.A—p. I-192.
5. Goldrus Drilling Company (NOL)—$13m—Texas—p. I-193.
6. Original Appalachian Artworks (PHC)—$6m)—Ohio & Georgia—p. I-219.
7. Candle Corporation (PHC)—$13m—California—p. I-219.
8. S.A. Horvitz Testamentary Trust (Gen. Util.)—$1m—Ohio—p. I-207.
9. Green Bay Packaging Corp. (Sub S)—$2m—Wisconsin—p. I-208.
10. New England Patriots (Gen. Util.)—$6m)—p. I-207.
11. Ireton Coal Corp. (NOL)—$18m—p. I-192.
12. Ala-Tenn Resources, Inc. (Gen. Util.)—no loss—p. I-208.
13. Metropolitan-First Minnesota Merger (NOL)—$9m—North Dakota—p. I-194.
14. Texas Air/Eastern Merger (NO)—$47m—p. I-194.
15. Brunswick Corp. (redemptions)—$61mA—IL—p. I-208.
16. Liberty Bell Park (Gen. Util.)—$5m—PA—p. I-206.
17. Beneficial Corp. (Gen. Util.)—$67m—p. I-206.

FINANCIAL INSTITUTIONS (BOND CARRYING CHARGES)

1. Delaware Banks—$1m—p. I-315.
2. UDAG projects—Cassville, MO and Bellows Falls, VT—p. I-315.
3. Charleston, SC Waterfront Park—neg. loss—p. I-315.
4. Clinton, TN Carriage Trace—p. I-315.
5. Upper Pontalba Apartments—$2m—Louisiana—p. I-315.
6. Woodward Wright Building—negligible loss—p. I-315.
7. Speed Mansion Project—neg. loss—Kentucky—p. I-315.
8. Park Forest/Town Center Project—negligible loss—Ill—p. I-315.
9. Chattanooga Warehouse Row—negligible loss—Tennessee—p. I-315.
10. Miller Milling Flour Mill—negligible loss—Minnesota—p. I-315.
11. Standard Electric Co.—negligible loss—WI—p. I-315.
12. Crabtree Warehouse Partnership—negiligible loss—Conn.—p. I-315.
13. Grand Rapids-Central Bank Building—negiligible loss—Michigan—p. I-315.
14. City of Wausau—negligible loss—Ohio—p. I-315.
15. Savannah Port Authority Warehouse—negligible loss—Georgia—p. I-315.
16. Towne Square Project—negligible loss—Dalton, Georgia—p. I-315.
17. Outlook Envelope—negiligible loss—IL—p. I-315.
18. Club Apartments—neg. loss—AL—p. I-315.
19. Charlotte, NC mortgage bonds—neg. loss.—p. I-315.
20. Ruppman Marketing—neg. loss—p. I-315.
21. East Broadway Project—neg. loss—Kentucky.
22. O.K. Industries—neg. loss—Oklahoma.

FOREIGN

1. Western Energy—$4m—Montana—p. I-502.
2. Lasco Shipping—negligible loss—Portland, OR—p. I-497.
3. Shell/FIRPTA—no loss—p. I-502.
4. AIG/CIGNA—$20m—p.-497.
5. Johnson & Johnson—$38m—p. I-489.
6. Eli Lilly—$5m—Indiana—p. I-505.
7. La Isla Virgin, Inc.—$5m—p. I-545.

PENSIONS

1. Bishop Estate—$1m—Honolulu, Hawaii—p. I-366.
2. Dresser Industries—$12m—p. I-419.
3. American Airlines—negiligible loss—p. I-426.
4. Lukens Steel—$1m—p. I-418.
5. Chris-Craft—$1m—New York—p. I-418.
6. University of Alabama, Birmingham—$1m—p. I-366.
7. Frontier Airlines—$2m—p. I-419 & 413.

REHAB TAX CREDIT

1. Old Main Village—$1m—Mankato, Minnesota.
2. Washburn-Crosby Mill—$2m—Minneapolis, Minnesota.
3. Barbara Jordan II Apartments—$1m—Providence, RI.
4. Lakeland/Marble Arcade—$1m—Lakeland, Florida.
5. Warrior Hotel—Sioux City, Iowa.
6. Willard Project—no loss—Dist. of Columbia.
7. WaterPark—$2m—Lincoln, Nebraska.
8. H.P. Lau Building—$1m—Lincoln, Nebraska.
9. 620 Project—$1m—Louisville, Kentucky.
10. Starks Building—$1m—Louisville, Kentucky.
11. Bellevue High School—$2m—Bellevue, Kentucky.
12. Mayor Hampden Smith House—$1m—Owensboro, Kentucky.
13. Doe Run Inn—$1m—Brandenburg, Kentucky.
14. State National Bank—$1m—Frankfort, Kentucky.
15. Captain Jack House—$1m—Fleming, Kentucky.
16. Elizabeth Arlinghaus House—$1m—Louisville, Kentucky.
17. Mattress Factory—$1m—Pennsylvania.
18. Limerick Shamrock—$1m—Louisville, Kentucky.
19. Robert Mills Project—South Carolina.
20. Bellevue Stratford Hotel—$6m—Pennsylvania.
21. Motor Square Garden—$5m—Pennsylvania.
22. Penn Station/Madison Square Garden—$21m—New York.
23. 30th Street Station—$5m—Philadelphia, PA.
24. Bigelow-Hartford—$3m—Connecticut.
25. Shriver-Johnson & Balckstone Inn—$1m—South Dakota.
26. Wayne County Courthouse—$4m—Michigan.
27. L.A. City Library—$7m—California.
28. Dixon Mill—$2m—New Jersey.
29. Bernheim Office Center—generic rehab rule.
30. 125th Street/Harlem Urban Development—$11m—New York.
31. American Youth Hostel—$1m—New York.
32. River West Loft Development—$1m—Illinois.
33. Gaslamp Quarter Historic District—$4m—California.
34. Eberhardt & Ober Brewery—$1m—Pennsylvania.
35. Fort Worth Town Square—$3m—Texas.
36. City of Marquette Heritage Hotel—$1m—Michigan.
37. Captain's Walk/Harris Place Development—$3m—Connecticut.

38. Nike/Clemson Mill—$2m—New Hampshire.
39. Grand Rapids Central Bank Building—$1m—Michigan.
40. Velvet Mills—$2m—Connecticut.
41. Roycroft Inn—$1m—New York.
42. Hayes Mansion—$3m—California.
43. Holy Names Academy—$1m—Spokane, Washington.
44. Bristol Carpet Mill—$3m—Connecticut.
45. Woods Common YMCA Building—Pennsylvania.
46. Newport Rehab—Rhode Island.
47. Union Station—Providence, RI.
48. Chattanooga Warehouse Row—Tennessee.
49. Union Station—Indianapolis, IN.
50. Wood Street Commons—Connecticut.
51. John Fitch Court—$2m.—Connecticut.
52. South Pack Plaza—Asheville, NC.

BONDS

1. Great Falls, Montana Redevelopment—neg. loss—p. I-629.
2. Valero Refining—$1m—Corpus Christi, Texas—p. I-621.
3. San Antonio, Texas Sports Facility—$10m—p. I-627.
4. Parking Garages—$4m—Providence, RI—p. I-638.
5. Providence, RI Convention Center/Parking—$3m—p. I-638.
6. Rhode Island bond carryforward—$12m—p. I-653.
7. Tobacco Row—$8m—Richmond, Virginia—p. I-657.
8. Outlet Building Parking—$6m—Providence, RI—p. I-638.
9. Lakeland/Marble Arcade—$1m—Lakeland, FL—p. I-651.
10. Lakeland/Wastewater—$1m—Lakeland, FL—p. I-660.
11. Lakeland/Center Hotel—$1m—Lakeland, FL—p. I-651.
12. Bradenton, Florida Medical Center—$1m—p. I-651.
13. Christian Apartments—$1m—Lakeland, FL—p. I-657.
14. Menlo Park, CA Residental Improvements—$1m—p. I-642.
15. San Jose Stadium—California.
16. Portland, Maine Resource Recovery—$6m—p. I-639.
17. NY University—$14m—p. I-655.
18. Bradley Lake—$14m—Alaska—p. I-656.
19. Autzen Stadium—$4m—Eugene, Oregon—p. I-627.
20. Metro Service District—$12m—Oregon—p. I-658.
21. Eugene, Oregon Parking Facilities—$1m—p. I-638.
22. Oregon TIF Projects—$23m—statewide—p. I-632.
23. Roseburg, Oregon Convention Facility—$1m—p. I-635.
24. Moyer Theater/Parking Garage—$1m—Portland, Oregon—p. I-638.
25. Philadelpha Trash-to-Steam—no loss—p. I-617.
26. Philadelpha Convention Center—no loss—p. I-617.
27. Kossman Projects—$5m—Penn.—p. I-644.
28. Kenosha Harbor—$8m—Kenosha, WI—p. I-632.
29. Andover, Massachusetts Town Hall—neg. loss—p. I-652.
30. Tulane University—$2m—New Orleans, LA—p. I-654.
31. Tulare Co., CA Housing Authority—$1m—p. I-644.
32. Gannon—$4m—St. Louis, Missouri—p. I-627.
33. St. Louis Sewer District—$5m—p. I-660.
34. St. Louis Partnerships—negligible loss—p. I-643.
35. Harbor Channel—$8m—Mobile, Alabama.
36. Bowling Green, OH Pollution Control—$4m—p. I-622.
37. Topeka, Kansas Redevelopment—$1m—p. I-629.
38. Spokane, WA Convention Center—$5m—p. I-635.
39. Central Valley Water Reclamation Project—$8m—p. I-661.
40. Buena Vista—$1m—p. I-644.
41. Moss Point, MS/Int. Paper—neg. loss—p. I-621.
42. Greenville Coliseum—$2m—p. I-636.
43. East Broadway Project—neg. loss—p. I-644.
44. University of Penn.—$7m—Philadelphia, PA—p. I-654.
45. Houston, Texas Metro—$32m—p. I-647.
46. Central Arizona Project—$32m—p. I-652.
47. Hoover Dam—$32m—p. I-656.
48. Sierra Pacific—$16m—p. I-621.
49. Austin, Texas Transitway—$20m—p. I-647.
50. NY Hospital—$12m.
51. Charleston, SC Solid Waste—negligible loss—p. I-639.
52. RFK Stadium—$2m—D.C.—p. I-627.
53. East Baton Rouge, LA Sewage Treatment—$8m—p. I-614.
54. Hernando County, FL Pooled Bonds—$24m—p. I-658.
55. Indiana Bond Bank—$19m—p. I-658.
56. Utah Pooled Bonds—$32m—p. I-658.
57. New Mexico Hospitals/Bond Pool—$3m—p. I-658.
58. Eastbank Wastewater—$8m—Louisiana—p. I-614.
59. Pennsylvania Pooled Bonds—$27m—p. I-658.
60. Orange County, FL Expressway—$40m—p. I-661.
61. Cornell University—New York—p. I-655.
62. Colorado Pooled Bonds—$24m—p. I-658.
63. North Carolina Pooled Bonds—$16m—p. I-658.
64. Tampa Bay Baseball Stadium—$7m—FL—p. I-624.
65. L.A. Coliseum Parking—$12m—California—p. I-637.
66. San Francisco Stadium—$4m—California—p. I-626.
67. Denver Coliseum—$8m—Colorado—p. I-626.
68. Mead-Phoenix transmission line—neg. loss—p. I-617.
69. 30th Street Station—$2m—Philadelphia, PA—p. I-649.
70. Charleston, SC Waterfront—$3m—p. I-619.
71. Charleston, WV Town Center Garage—$4m—p. I-639.
72. Penn Station/Madison Square Garden—$18m—New York—p. I-626.
73. Washington University Medical Center—$8m—Missouri—p. I-653..
74. Georgia Municipal Association—$11m—p. I-658.
75. 2 Kentucky Bond Pools—$30m—p. I-658.
76. Homewood, IL Bond Pool—$24m—p. I-658.
77. Tennessee Pooled Bonds—$23m—p. I-658.
78. Illinois Pooled Bonds—$47m—p. I-658.
79. Oakland Stadium—$8m—California—p. I-626.
80. Sarasota Sports Stadium—$1m—Florida—p. I-626.
81. Austin Convention/Civic Center—$10m—Texas—p. I-634.
82. Columbus Convention Center—$12m—Ohio—p. I-635.
82. City of Mesquite Hotel/Civic Center—$1m—Texas—p. I-634.
84. Los Angeles Pension Bonds—$35m—p. I-646.
85. Ohio Rapid Rail—$40m—p. I-656.
86. Huntsville Solid Waste—no loss—Alabama—p. I-658.
87. Pacific Gas & Electric—$4m—CA—p. I-621.
88. Peabody Place—$17m—Tennessee—pp. I-631 & 636.
89. Northwestern University—$4m—IL—p. I-654.
90. Forest City Parking Facility—$5m—Mass.—p. I-637.
91. O'Hare Airport—$2m—Illinois—p. I-628.
92. Navy Pier—$8m—Illinois—p. I-630.
93. Sacramento, Calif. Airport—$12m—p. I-628.
94. Austin Conservation Program—$6m—Texas—p. I-652.
95. Chicago Mixed-use Center—$8m—Il—p. I-630.
96. Austin Arts Program—no loss—Texas—p. I-655.
97. Oakwood, GA Housing Authority—no loss—p. I-643.
98. Howard University—$9m—D.C.—p. I-655.
99. Harlem Urban Development—$13m—New York City—p. I-633.
100. Olds Plaza Hotel—$1m—Michigan—p. I-651.
101. Shaw—$1m—D.C.—p. I-631.
102. Evanston/Northwestern Univ. Redevelopment—no loss—Illinois—p. I-631.
103. Seabrook Nuclear Power Plant—$6m—NH—p. I-621.
104. Holland, Michigan Holland Center—$1m—p. I-651.
105. Anchor Store Project—$2m—Michigan—p. I-651.
106. Northlake Project—$1m—Illinois—p. I-644.
107. East Bank Housing Project—$1m—MI—p. I-632.
108. Wurzburg Block Redevelopment—$5m—MI—p. I-632.
109. Marquette Heritage Hotel—$1m—MI—p. I-651.
110. Austin Aquafest—no loss—Texas—p. I-634.
111. Grand Rapids, MI arena project—$7m—p. I-627.
112. Harborside Hotel—$3m—Mass.—p. I-628.
113. Columbia University—$23m—New York City—p. I-653.
114. State of Connecticut—$12m—p. I-652.
115. Club Apartments—$1m—Alabama—p. I-643.
116. Benton Park & Soulard—negligible loss—MO—p. I-643.
117. Braintree, Mass. Nursing Home—$1m—p. I-643.
118. Yale University—$7m—Connecticut—p. I-653.
119. Tranquility Irrigation District—$1m—CA—p. I-653.
120. State Office Building/Parking—$2m—L.A., Calif.—p. I-637.
121. 200 N. Dearborn Project—$3m—Illinois—p. I-642.
122. Kenwood-Oakland Apartments—$1m—IL—p. I-642.
123. Greenwood Apartments—$1m—Illinois—p. I-642.

124. St. Mary's Hospital—$2m—Wisconsin—p. I-657.
125. State Theatre—$2m—Minnesota—p. I-631.
126. Hennepin Avenue—$4m—Minnesota—p. I-631.
127. Arkansas Development Finance Authority—$6m—p. I-651.
128. Indian Valley—no—loss—California—p. I-658.
129. San Jose State—no—loss—California—p. I-651.
130. Raleigh & Charlotte, NC housing projects—negligible loss—p. I-657.
131. City of Bell Gardens, Calif.—$1m.
132. Clinton, TN Carriage Trace.

INSURANCE

1. Workers Compensation Self-Insurance Trusts—$10m—Michigan—p. I-871.
2. Extension of 1984 Act relief for certain insurance companies holding market discount bonds—$103m—all on p. I-322.
a. AETNA—$15m.
b. Provident Life & Accident—$2m.
c. Massachusetts Mutual—$11m.
d. Mutual Benefit—$10m.
e. Connecticut Mutual—$10m.
f. Phoenix Mutual—$2m.
g. John Hancock—$10m.
h. New England Life—$1m.
i. Penn Mutual—$5m.
j. Transamerica—$1m.
k. Northwestern—$6m.
l. Provident Mutual—$4m.
m. Prudential—$4m.
n. Mutual of Omaha—$5m.
o. Metropolitan Life—$13m.

MISCELLANEOUS

1. MarkAir (safe-harbor)—$6m—Alaska—p. I-89.
2. Freeport McMoran—consolidated returns—no loss—p. I-221.
3. Middle-South Utilities (ITC/min. tax)—$20m—p. I-275.
4. Louisiana Academics and Athletics (char. cont.)—Baton Rouge, Louisiana—p. I-724.
5. Parsons Corporation (ESOPs)—$1m—Pasadena, Calif.—p. I-418.
6. Rose Spurrier Scholarship Fund (IRC change)—neg. loss—Kingman, Kansas.
7. Technology transfer (tax-exempt orgs.)—$1m—Arizona—p. I-721.
8. Frankford Arsenal (expensing of rehab expenditures)—$10m—Philadelphia, Pennsylvania—p. I-110.
9. Rentar Industries (operating rights)—$1m—p. I-104.
10. Tip reporting modification—no loss.
11. Austin Community College (UBIT)—$1m—Texas.
12. University of Texas (char. cont.)—negligible loss—p. I-724.

LOW-INCOME HOUSING

1. Generic low-income housing relief—$500m.
2. New York City Housing Development Corp.—$50m.
3. SHARP—$50m—Massachusetts.
4. Chicago Projects—$50m.
5. Texas rural low-income housing projects—$1m.

TECHNICAL CHANGES

1. Harza Engineering (sec. 1807)—$5m—Illinois—p.I-279.
2. IC Industries (foreign)—$5m—Illinois—p. I-777.
3. Western and Southern (insurance)—$10m—p. I-799.
4. Tenneco (insurance)—no loss.

Mr. PACKWOOD. I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, first I want to thank the distinguished chairman and compliment him for a marvelous job. We will do something historic at 4 o'clock. I wish I had about 30 or 40 minutes but that is not the case.

Mr. President, no army is as powerful as an idea whose time has come. The idea is the Tax Reform Act of 1986 and since there is approximately 1 week of this Congress remaining, the time is now.

The American people want tax reform because our present tax system is too complicated. It is inequitable, and it interferes with economic choices of households and businesses.

The country needs it because our system is a so-called voluntary system which is nourished by general taxpayer support and which depends on taxpayers' confidence in the fairness of the system.

Over the years our Tax Code's integrity has been compromised, and this is reflected by decreased compliance.

The size of the U.S. underground economy is evidence that compliance has been decreasing. Our underground economy is the seventh largest economy in the world—in excess of $100 billion per year that goes unreported to the IRS. More than a $100 billion that should be going to the Treasury.

For those Americans who are paying taxes, there is a perception that the system is not fair.

Some have argued that this criticism is more of a perception than a reality.

However, the perception is that fairness has been eroded by layer upon layer of loopholes.

The cost of loopholes has grown over the years.

In 1967, the value of all loopholes was about $37 billion. In 1986, the value of all loopholes will be over $400 billion.

This bill eliminates a majority of the loopholes and abuses.

It is not perfect, but it is fairer than what we have now.

Some loopholes survive that probably should not. It goes too far in other areas. In short, it creates winners and losers.

The bedrock of this tax reform bill is that people who earn the same amount of money should pay approximately the same tax.

It is simple, common sense proposition.

I am glad we are returning to this basic premise because I sense that without this bill we would soon emulate the French. Their tax system is so perverse that they actually negotiate with their tax collectors.

In France, fairness isn't even a consideration.

In France, uniformity isn't a consideration.

In some ways this bill is simplification. The tax brackets are reduced from 15 to 2 and the standard deduction is increased, allowing more than 14 million people to avoid keeping burdensome records and itemizing their deductions.

The bill retains the most widely utilized itemized deductions, including deduction for home mortgage interest, State and local income and property taxes, and charitable contributions for itemizers and the child care credit. Everyone can continue to contribute to an IRA.

Unfortunately the bill eliminates the deduction for State sales taxes.

It is not perfect, but it is fairer than what we have now.

For a long time I was not enthusiastic about undertaking this massive reform.

Reform means change and change results in unavoidable disruption in the economy.

But during this legislative process that has been going on since the President called for the Treasury study, I have become convinced that there is never a good time to take necessary corrective action of this type.

Therefore, now is as good of time as any, and in fact, it is probably the best time with this President leading the tax reform crusade.

I am convinced that it does not matter whether the economy is at the beginning or end of an economic cycle. There is no magic moment when the code could be changed without affecting the economy.

We have probably seen the impact the uncertainty that has resulted from having this bill pending.

I know of projects that have been canceled in my own State because no one knew what the rules were going to be.

From this standpoint, the important thing is that we end the uncertainty and pass this bill.

It is not perfect, but it is fairer than what we have now.

There are divergent opinions about how this bill will affect the economy.

There is probably a different opinion for every Senator in this Chamber.

However, I believe it depends significantly upon how the American people react.

This is a wonderful economic machine that we have.

It is a flexible, ingenious, resilient system, but the real test will be how the small businessmen react; how the investors react; how corporate America reacts.

No question the Tax Code has diverted investment in the past.

Decisions were not based on the best investment, but the best tax package.

The question we face is, can we prosper in an environment where the tax system is neutral?

Can our economic engine move forward without being in tax overdrive?

In the past tax policy has resulted in terrible waste, tax shelters prospered while good, solid investments in non-tax-favored areas were ignored.

The tax considerations were interfering with capitalism and the free enterprise system.

Tax considerations were misallocating capital and were resulting in higher interest rates.

The bill is not perfect, but it is better than what we have now.

This bill takes 6 million working poor off the tax roles. This really makes sense.

History may look back and record this initiative as one of the most successful welfare programs that benefits the most needy in our society.

A single parent with three children making $12,000 will pay $1,200 less in income tax. That family will get an 83-percent tax cut.

A couple with two kids making $15,000 will receive a tax cut of $826.

Four out of five taxpayers will pay no more than the 15-percent tax rate; 69 million Americans earning under $50,000 in the first year after passage of this bill will get a tax cut; 12 million will have a tax increase; it is not perfect, but it is fairer than what we have now.

This legislation is a historic milestone in our lifetime. I was a child the last time the Congress made changes of this magnitude. Senator PACKWOOD and Senator LONG, the Finance Committee and Joint Tax Committee staffs should be commended for piloting this bill through the Congress.

In a sense this bill is an economic declaration of independence from the Tax Code because this bill significantly reduces the impact of the Tax Code will play in future investment decisions. This is good.

The theory is excellent, but some of the means contained in this bill may end up needing additional consideration. However, I do not want anyone to think it will be easy to enact further changes, because it will not be.

The overall structure of the bill is to reduce the rates and broaden the tax base. Adding back deductions, rules or credits would mean a rate increase—this should be avoided.

There are winners and losers.

It is not perfect, but it is fairer than what we have now.

For a long time businessmen, economists, and economic policy experts have agreed that the economy would function better without having the tax consequences interfere.

Some would argue that we have gone too far. I would agree that those who insist that people actively involved in real estate should not be treated differently under the loss-limitation rules than taxpayers actively invoved in other types of business.

Real estate investors, like other taxpayers, should be able to fully deduct losses that result from actual cash expenses.

Other, the retroactive aspects of the bill are unfair.

I am troubled about farmers and ranchers who have sold land on long-term contracts expecting capital gains treatment, and are locked into their sales, but locked out of taking further capital gains.

This bill eliminates the 3-year recovery rule for Federal employees and other taxpayers with employee contribution plans. I would have preferred that the rule remain. However, the issue lost on the Senate floor in spite of my vote to retain it.

I am pleased with some of the other pension provisions. The bill reduces the number of years that an employer can require an employee to work before the employee gains the right to a pension. The bill expands the participation rules so that more employees would be covered under a plan.

I mention these provisions because they are some of the most controversial, however, they are not enough to justify a vote against this bill.

In the overall package much more is gained.

It is not perfect, but it's a lot fairer than what we have now.

I have received hundreds of letters about tax reform. Most of them focused on one or two provisions which constituents did not like.

As a Senator I cannot view this bill that way.

I have to assess the overall effect of this bill. I am pleased because businesses and individuals who paid little or no taxes before, will pay their fair share now.

I realize these changes can cause problems for the small businessman. Plans will have to be revised and modified. I have to ask everyone to work together on this.

It is not perfect, but it is fairer than what we have now.

Probably the most serious problem with this bill is the deficit implications.

This bill raises revenue by $11.4 billion in fiscal year 1987 which everyone is happy about.

Members will be less happy next year when they find that this bill reduces revenues by $16.7 billion at a time when they are struggling to reach the fiscal year 1988 Gramm-Rudman-Hollings deficit goal of $108 billion.

This means that we will have to find at least $52 billion in budget savings at a time when defense budget authority will have actually gone down for 2 years running, when we have already imposed substantial restraint on appropriated domestic programs and when we have reduced entitlement funding for some programs several years in a row.

And, the revenue pressures from this bill will not end next year. This bill loses $15.1 billion in fiscal year 1989. Our goal under Gramm-Rudman is $76 billion for the deficit.

My point, Mr. President, is that the budget implications of this tax bill, as with many things we do around here, are secondary because we think we have an issue that is so important it shouldn't be bound by the budget.

I want to warn my colleagues today that the revenue loss in this bill for fiscal year 1988 will come back to haunt us when we begin next year's budget process. In the debate on the Senate floor, I had strongly urged the conferees to eliminate these large revenue swings—which are considered as "revenue neutrality" by some—but are revenue losses under the budget process.

However, in spite of the budget implications of this bill, I am going to vote for it and urge my colleagues to vote for it.

In passing this bill, the Congress is doing something positive for America.

It should give the American people a greater confidence about our ability as an institution to deal with other complex issues that confront our Nation.

Thank you, Mr. President.

In summary, the four points I am trying to make are:

First, I used to wonder if now was the right time to pass this bill. I have come full circle, and concluded there would never be a right time if we were waiting around for economists and others in this system to say we are now ready.

So I conclude it is absolutely the right time because we are ready and the people are ready. The President has led us down this path. So it is as right as any time in history.

Second, surely you do not pass this kind of bill without changing things that exist now in a dramatic way. You will get a lot of people who are concerned about moving from the way it is to a new way. We ought to be concerned. But there ought not be any doubt that the new way is better than the previous way because it is. If you put these two bills—the new law and the old law—side by side, with neither of them in effect, 99 percent of the Senate, the House, and everyone would choose the new law. It is because the old law is in place, and you are afraid of the change that you have concern. So I conclude there is a risk but the risk is predominantly short term.

How do we get by the next couple of years as these changes impact on those who are doing business and conducting their investments and their lives under the old law? We can watch

that carefully, and if need be, we can make some adjustments.

Third, after the long haul, would it be good or bad for the American economy. There is no doubt in my mind that it will be good for the American economy. I will take one simple aspect.

The most significant negative going in the American economy is high real interest rates. There is no doubt that this bill when it is finally in full effect, and we have got through the change, will cause the allocation of capital to take place on the basis of real economic competition instead of the competition of investments based upon a Tax Code which gives many of them a huge advantage thus causing money to flow their way and the nontax advantage investments pays more for it. In essence, the current tax law misallocates capital, and when we adjust to that, and into a more neutral arena, interest rates will come down I would predict 1 to 2 points in 24 months under this bill because of that new allocation of resources.

My last point is the deficit. We have a deficit problem, and we have a Tax Code problem. Both are serious. We must reform the Tax Code and we must address the deficit. At one time I thought we could ask the tax reform to help with the deficit.

I have concluded we cannot ask the tax reformers who have a difficult time with reform to add to their burden solving the deficit problem.

I have concluded looking at 3 or 4 years tax reform will add somewhat to the deficit problem but the plus is on the side that they have reformed the tax laws.

I do not think we could have done much more. We could not have solved the deficit by adding revenues, and yet get this reform through.

In conclusion, I think this will be a day we will mark in economic history, and in the fair play history of our country as one of the red letter days. To all of those who worked hard, to the President who led, my compliments, and we will watch it carefully collectively.

I believe it will work ultimately to the benefit of Americans, to the benefit of the economy that gives them their economic nourishment and which is basic to all of us who have participated.

I yield the floor.

Mr. PACKWOOD. Mr. President, could I ask how much time I have left?

The PRESIDING OFFICER. The Senator from Oregon has 23 minutes remaining.

Mr. PACKWOOD. As I understand, I will divide 30 minutes equally with Senator LONG starting at 3:30. And Senator LONG will have 15 minutes, and I will have 15 minutes.

The PRESIDING OFFICER. That is correct.

Mr. PACKWOOD. I would like to yield 1 minute to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, first I wish to thank the chairman for yielding, and compliment the chairman for his long, long work on this legislative process.

Mr. President, even though I voted for the tax reform bill in the Finance Committee and on the Senate floor, I did not do so without serious concerns and reservations. The following is a list of provisions that are of particular concern to me and my constituents:

The retroactive provisions. For example, the investment credit is repealed effective January 1, 1986. The passive loss provisions significantly change the treatment of investments made in past years. Changing the rules in the middle of the game is unfair, if not immoral.

Many provisions of the bill have a very negative effect on Idaho farmers. As a farmer myself, I know that they are not happy with the loss of the investment credit, income averaging, and the loss of the capital gain differential.

The bill fails to implement the lower rates at the same time that deductions are lost.

The bill continues the policy of creating additional penalties for failure to meet additional compliance regulations. Both the regulations and the penalties add to the burden of the small taxpayer. The bill also provides that interest paid by the IRS will be 1 percent less than that paid by the taxpayer.

The bill disallows the deduction for a portion of legitimate business expenses: For example, unreimbursed expenses of employees, investment advisory services, union dues, meals, and tax return preparation.

There is serious doubt whether the bill is revenue neutral because it does not take into account the change in taxpayer behavior that will result from its passage. It may raise less revenue than current law.

Several provisions will result in complicated and expensive bookkeeping costs, but will merely speed up by 1-year tax collections. The provisions do not provide for a continuing increase in tax receipts that might warrant the additional cost to the taxpayer.

The repeal of the General Utilities Doctrine means that any artificial appreciation in the value of the land in a small farm corporation due to government-caused inflation will be taxed on liquidation first to the corporation and again at the shareholder level. This could be devastating to a small retiring farmer who is also losing the benefit of the capital gains provision.

The practicality of the book income provision under the minimum tax has not been thought out. How does this affect Idaho corporations when few of them report to the SEC or have audited financial statements?

I am also disappointed with the Senate conferees for giving away provisions important to agriculture, mining, and timber in the final conference report such as: Capital gains treatment for corporations. The retention of this provision is important to the timber industry; exclusion of exploration and development costs as a minimum tax preference for hard rock mining; an agriculture provision increasing the FUTA tax threshold amount for coverage; an agriculture provision that affected the section 1245 recapture on installment sales of irrigation equipment; a provision making 50 percent of hospital insurance deductible by a self-employed person. The conferees compromised the percentage from 50 percent to 25 percent.

Except for the last item, there is no significant revenue involved in any of these provisions.

The dissatisfaction with this bill by many of my farm community constitutents is justified and reasonable. I would certainly not vote for the bill if there were not other compelling reasons to vote for it. The best reasons to vote for the bill are:

Four out of five taxpayers will get a tax cut.

Eighty percent of all taxpayers will not pay above 15 percent.

The higher standard deduction will make it simpler for those additional taxpayers who do not have to keep a record of their deductions.

Low rates. Under current law the 50 percent top bracket makes it as profitable to hide existing income as it is to earn additional income under this bill with a maximum rate of 28 percent it will be twice as profitable to earn more as it would be to hide existing income.

Tax shelters will be eliminated and capital will flow where it should for economic reasons rather than for tax reasons.

A tough minimum tax will make it impossible for individuals and corporations with true income to avoid paying taxes.

Because I believe the reasons to support the bill are more compelling from the standpoint that they move the Tax Code generally in a positive direction with respect to rates and the policy of allowing the free market to control the flow of capital, I intend to vote for the bill.

I intend to oppose any attempt in the future to raise the rates and I will make every effort to correct the bill's deficiencies.

Mr. President, I am going to vote for this legislation. There are many objections that I find in the legislation. But I think in the long run, as the Senator

from New Mexico has just so eloquently stated, this bill will be an improvement in the tax system. It will be more fair with a historic reduction in tax rates for both business and individuals. I think that the good in the bill far outweighs the bad.

I sat here, and listened to my colleague from Ohio complaining about the transition rules. I did not hear him complain about the transition rule for the steel companies which is not a true transition rule. It gives steel companies preferential treatment that our farmers and miners did not get. I did not hear him speak out to correct this injustice.

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

□ 1520

Mr. LONG. Mr. President, I yield 8 minutes to the Senator from Tennessee [Mr. SASSER].

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I want to take this opportunity to commend the distinguished chairman of the Senate Finance Committee Mr. PACKWOOD as well as the distinguished ranking member, Senator LONG of Louisiana, the long, diligent effort they have put into this tax bill.

I would be remiss if I did not recognize the effort and talent that the senior Senator from New Jersey [Mr. BRADLEY] in fashioning the final result that we debate today.

Mr. President, tax reform means many things to many persons. But we would all agree that two fundamentals to true tax reform must be simplicity and fairness. I think the drafters of this legislation would agree that if they were working in a perfect world, this legislation would be more simple and it would be more fair, than that presented to us today.

I am mindful of all of the tradeoffs that are necessary in the rough and tumble of writing a tax bill. In the judgment of this Senator, however, this package does not provide the degree of fairness or the level of simplicity that meaningful tax reform demands.

The most glaring example of where this measure fails to fulfull the promise of fairness is the loss of a progressive Tax Code.

Quite simply, this legislation removes any vestige of a progressive tax system. The bill drops the top individual tax rate from 50 percent to 28 percent.

I know it is true that some of the recapture and phaseout provisions in the legislation could impose a marginal rate of 33 percent. But even so, this is a dramatic drop from 50 percent. Although I would agree that perhaps a 50-percent rate should be lowered, the net result is that our highest income earners will be treated in a similar fashion, taxed at the same rate, as the middle-income wage earners.

In short, a head of household with a family of four with a taxable income of $29,750 will be taxed at the same rate as one earning $1 million. A single wage earner with a taxable income of $17,500 would be taxed at the same rate as one with an income of $2 million.

In my judgment, Mr. President, we are going to have a difficult time explaining that element of fairness, or lack of fairness in the view of this Senator, to our constituents.

It is a serious mistake to treat a person with a taxable income in the neighborhood of $30,000 the same as you would a person with a taxable income of $200,000. The economic circumstances are entirely different.

My belief in a progressive tax structure stems in part from a heritage that was born in my native State of Tennessee and a belief in a progressive Tax Code. As many of my colleagues know, the father of the progressive income tax system in this country was Cordell Hull, a native of Pickett County, TN. Cordell Hull shepherded the income tax law of 1913 and its revision in 1916 through the Congress. I believe that Cordell Hull, were he here today, would share my fears over the abandonment of our progressive tax system.

We are seeing right now in this country a growing disparity between the very wealthy and the very poor. This disparity is continuing.

I am mindful of the fact that the drafters of this legislation have attempted to address that by removing millions of individuals below the poverty line from the tax rolls. For that, I commend them. That is a very attractive feature of the legislation and makes voting against it a close call.

But, Mr. President, that does not, in the judgment of this Senator, counterbalance the loss of the progressive tax structure.

I believe that to eliminate the progressive nature of the Tax Code provides a windfall to wealthy Americans throughout America.

It has been reported that over half of the taxpayers earning over $200,000 will receive a tax cut averaging around $25,000 under this bill. Bear in mind, this comes on top of the tax cuts of 1981 in the tax bill which favored upper-income taxpayers at that time to the detriment of middle-income taxpayers.

Once again, it appears to me we are traveling down the road of supply-side economics and hoping for the best.

It has been reported to me, Mr. President, that this bill will actually increase the taxes of 5.8 million Americans who earn less than $20,000. Those middle- and low-income earners who receive a tax cut under this bill are likely to see cuts ranging between $200 and $400. At the same time, they are going to get increases in their Social Security taxes.

So I fear when all of the deductions are gone, when all the calculations are made many of our middle-income taxpayers will find their so-called tax cut is really inconsequential.

The greatest threat to the health of the American economy are the massive budget deficits that have occurred since 1981. There is a persuasive danger that this legislation will add to the deficit. For example Roger Brenner of Data Resources, Inc., estimates that in 1987 the Treasury will lose $21 billion more in revenue than predicted by the Joint Committee on Taxation. Revenue losses of almost $17 billion in 1988 are predicted by the joint Senate House conference committee report and $15 billion in 1989. Should there be a downturn in the economy the deficit would be dramatically increased. It hardly seems the time for legislation that loses revenue and increases the deficit.

There is the question of fairness in the elimination of the deduction for State sales tax. Here the inequity is glaring. The sales tax deduction is the only State or local tax singled out for elimination. All other State or local taxes are deemed worthy of deduction.

Where is the fairness in singling out the sales tax deduction in this manner?

The deductions for sales taxes in my native State of Tennessee were worth $585 per itemizing household in 1985. Without the sales tax deduction, those States that rely on the sales tax to support State government will lose as much as 48 percent of their total savings from the deduction allowed for State and local taxes.

I would point out, Mr. President, that here in this day of the most awesome budget deficit in the history of the United States of America—we have seen our national debt double in the space of 5 years—we are engaging ourselves in adopting a revenue measure which is allegedly revenue neutral. But when you look in the out years of 1988 and 1989, the losses are almost $17 billion in 1988 and almost $15 billion in 1989.

How in the world can we be standing here today debating a revenue measure that is going to lose the Federal Government revenue in 1988 and 1989, that is actually going to increase the Federal deficit?

Now, some of my colleagues will protest that I have a purely parochial interest in this issue. And it is true that my home State of Tennessee would be severely penalized by the loss of the sales tax deduction. Sales taxes account for 58 percent of all State revenues collected in Tennessee. The deduction for sales taxes was worth $585 per itemizing household in Tennessee

in 1985. Without the sales tax deduction, Tennessee will lose 48 percent of their total savings from the deduction allowed for State and local taxes.

I would point out to my colleagues, this misguided change does more than hit State government and the citizens of Tennessee in the pocketbook. Elimination of the deduction for State sales taxes interjects the Federal Government into the planning of State tax systems. This bill essentially undermines a State's ability to determine its sources of revenue. There may be merit in the argument that States should not rely on a sales tax as their central revenue source. But the place for that debate is not the U.S. Congress. It is not our place to dictate how a State shall finance its operations. That decision is best left to State officials. I am very disturbed by this Federal intrusion into the fiscal matters of State governments.

The bill is also unfair in its treatment of small business. The Washington Post ran an article on August 25 of this year describing the bill's impact on small business in these terms: "for small businesses, the tax-overhaul bill is bad news—unless the business is an accounting firm." This view was repeated over and over again during the White House Conference on Small Business last month. Several leading small business organizations, National Small Business and the Small Business Legislative Council, oppose the bill. They realize that this bill creates new recordkeeping nightmares for small business. They understand the bill could cripple the formation and growth of small firms.

Specifically, some small businesses will be hurt as they are forced to switch to the calendar year for accounting purposes. Others will have to restructure their employee pension plans. Elimination of the investment tax credit will harm capital intensive small firms. Retroactive application of the repeal of the ITC only compounds this situation. Elimination of the capital gains differential threatens business startups.

This is especially troubling to those of us who have championed small business concerns throughout the tax reform debate. I have worked for more than 2 years to see that the needs of our small business community are addressed in this sweeping reform effort. I am not convinced we have done all that we could in this area.

I am also troubled about the impact of this bill on our economy. As my colleagues know, there is wide divergence of opinion on the impact of this bill on the economy. Most are in agreement that we will see a negative impact in the short-term. With an already ailing economy, can we sustain even a modest downturn wrought by this bill? And what if the dire predictions of significant adverse consequences for economic growth hold true? It appears to me, Mr. President, that we are about to embark on yet another "riverboat gamble." The last time we gambled with such big stakes was in 1981. We've been living with the deficits rung up by that gamble ever since. I question the wisdom of rolling the dice yet again.

And then there is the question of simplicity. The tax returns most Americans will fill out following passage of this bill will be no simpler than what we see today. There are still a host of deductions, exemptions, and credits available to individuals. Indeed, the bill creates many new taxpayer tasks. Calculating the treatment of contributions to IRA's; determining whether miscellaneous itemized deductions exceed 2 percent of one's adjusted gross income; figuring out what portion of business meals, travel, and entertainment are deductible; these all make a mockery of the goal of a simplified tax system.

And this is only the individual side of the ledger. For business, there is even less promise of a simplified tax system. The changes in accounting rules and depreciation schedules promise new complicating forms for business. Restructuring of employee pension plans promises headaches for many. While these changes will mean a boon for accountants across the country, it tears asunder any hope for a simplified Tax Code for our business community.

Mr. President, I am not blind to the fact that there are worthy elements to this package. The bill does take 6 million poor Americans off the tax rolls. This package does manage to close some loopholes which have cost taxpayers millions to dollars. And perhaps, the bill begins to restore the faith of taxpayers in the Federal income tax.

I remain unsatisfied that efforts on these fronts outweigh the concerns I have raised. We have promised the American people quite a bit throughout the tax reform debate. I do not believe this package fulfills those promises. It falls short on delivering a tax system that is both fairer and simpler. We can achieve these goals, Mr. President. But not with this package. I, therefore, will vote against this measure.

Mr. LONG. Mr. President, I yield 2 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator is recognized for the last 2 minutes.

Mr. LAUTENBERG. Mr. President, I first want to applaud the hard work of the chairman and ranking member of the Finance Committee, and all the members of the conference, who labored long and hard to produce this bill. It is a work of historic dimension.

But, I reserve my highest praise for my colleague from New Jersey, Senator BRADLEY. The fact that the Senate is here today, debating this historic legislation, is a tribute to the persistence and the persuasiveness of my distinguished colleague.

Senator BRADLEY has pursued the goal of tax reform vigorously and relentlessly over the last couple of years and with the consistency of principle that has won him great credit and great respect. He has insisted in public forums and private meetings that fairness and equity in taxation is an essential factor in a democratic society.

Mr. President, today the Senate will make a major change, a change in direction. Today, the Senate redirects our Nation's tax policy. Today, we direct our tax law toward fairness. We direct our tax law toward efficiency. We direct our tax law toward growth.

The tax law has grown into a clumsy and cumbersome thing, dragging along with it a trail of interest groups and special pleaders. Turning our tax law around is no easy feat. It is like making a U-turn on a city street in a tractor-trailer. It is not easy. It takes a strong hand. And it takes a certain amount of faith that nothing gets crushed in the process.

But, turn around our tax law, we have. Today, we point the Nation in a new direction.

Today, the Senate stands up for fairness. It stands up for efficiency.

What is fair?

What is fair is that every income earner and every profitable corporation pay a fair share of tax. And they would, with the stiffest, most far-reaching minimum tax ever enacted.

What is fair is that as a person's income rises, so should the tax rate one pays. This should not only be a rate on a tax table, but the rate one pays. Once we close the tax shelters and loopholes, the rate in the table and the rate one pays will be closer to one and the same.

What is fair is that two people—living in similar houses, earning similar salaries, supporting families of similar size—will pay about the same amount of tax. And they will, with this law.

What is fair is that the working poor, and middle-income Americans get some tax relief. And they would, under this law.

But, Mr. President, we strive today not just for fairness. We strive for efficiency. We strive for a system where investment decisions are made by looking not to the Tax Code, but to the marketplace. We strive for a system where inventors and innovators can get the backing they need, based not on the tax losses they may produce, but based on the products, inventions, and innovations they create.

Mr. President, no bill is perfect. This bill is no exception. I supported amendments to make this bill better, by restoring the universal IRA; by providing greater tax relief to the middle class. I was concerned about the retroactive changes that this law would make. I was concerned about hardship on those who made investments, reasonably relying on the law as it was.

I am concerned about the impact of the bill on investment. I hope and believe that the impact will be positive. I hope and believe that on the whole the economy will be helped.

But, we have to recognize one thing. We have no guarantees. The economists give us predictions, they give us projections. But they don't give us guarantees.

Yet, we are propelled today by one basic notion. That it is better for business to invest based on their real returns, than to invest based on the returns that a jerry-built Tax Code would give. We are motivated by the belief that directing investment toward real returns will yield greater returns, to our Nation, to our economy, and to our people.

But there are no guarantees. And I say now, that we must monitor the results of this law. We must take a good hard look at its effects. We will not know tomorrow if we are more wrong than right. But, we cannot be blind to error. We must be open to make corrections.

And we must live with uncertainty. In no respect does that have a greater impact than with the Nation's budget deficit. We are told the tax bill will boost revenue in 1987. And it will lose revenue in 1988 and 1989. We are told that the law would yield 11 billion more in 1987. Seventeen billion less in 1988. Fifteen billion less in 1989. These swings seem minor when placed aside the total pot of revenue. An error of $10 billion or $15 billion is a minor error.

But, the size of these swings is great, when placed beside a deficit of $200 billion and more. Those swings could wipe out the effect of major cuts in spending. They could trigger across-the-board budget cuts in future years. We just passed a reconciliation bill with $13 billion in saving. We need to be watchful of how the bill affects the deficit. We need to be ready to make corrections, if needed.

One last point, Mr. President. For years, the Tax Code has been a tool of social and economic policy. Today, we do not reject that role. But we recognize that we have chased too many nonrevenue goals; and to date, we have achieved too few.

Today, we do not reject the Tax Code as a tool of social and economic policy. We rejuvenate it, by getting back to basic policy.

The Code we pass today should promote initiative, promote home ownership, and promote investment. The Code we pass today should promote equality, fairness, and efficiency.

Those, Mr. President, are basic goals. Those are goals we should seek.

This is a historic occasion. I urge adoption of the conference report.

The PRESIDING OFFICER. Under the previous order, the Senator from Louisiana [Mr. LONG] is now recognized until the hour of 3:45 p.m.

Mr. LONG. What time is that, Mr. President?

The PRESIDING OFFICER. Until the hour of 3:45 p.m. That is 15 minutes.

Mr. LONG. Mr. President, I yield 5 minutes to the Senator from Iowa [Mr. HARKIN].

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. HARKIN. Mr. President, I thank the distinguished Senator from Louisiana for yielding me this time.

I had not made up my mind until just a few minutes ago, Mr. President, to vote for this bill. I want to make it clear that I am still not quite adamant on this bill. There are provisions I like; there are provisions I dislike. I want to say at the outset that thanks to the great persuasive powers of my friend and colleague from New Jersey [Mr. BRADLEY], who has enlightened me on the provisions of the bill over the last 3 months, I am convinced there are more pluses than minuses in this bill, and I think it is the right course for the country to take. I want to add, Mr. President, my great esteem for the staying power of Senator BRADLEY. He has fought for this for over 5 years, through thick and thin, when many said the tax reform bill would never make it. If I ever have to go into battle, legislatively or otherwise, I want the Senator from New Jersey, Senator BRADLEY, on my side.

Mr. President, for too long, large corporations in our country have been paying no taxes. It has destroyed the faith of too many of our people in the Tax Code and in the fairness of our society. This bill changes the law that allows large corporations to pay nothing in taxes. For too long, we have had too many corporate mergers which have created no new creative capacity. In fact, I think the mergers have caused harm to the economy.

This bill eliminates many provisions which have promoted the merger of so many corporations into conglomerates.

There is the question of progressivity, however. Prior to 1981, we had a top rate of 70 percent. In 1981, the top rate went to 50 percent. Now it goes down to 28 percent. What this means is that a family of four making $30,000 a year pays the same rate on an extra dollar of income as a family making $500,000 a year. Mr. President, I just cannot believe this is fair. If we had adopted the Mitchell amendment on the floor of the Senate, and if it were in the bill before us, my support for this bill would be very strong. I am hopeful that we can pass a provision along the lines of the Mitchell amendment in the next Congress.

If I thought this bill would stay unchanged for the next 10 years, I would not vote for it. But I know we are going to have to change it.

I also want to talk about the impact on agriculture, Mr. President. Right now, the Government is spending billions of dollars a year through tax provisions that increase production by promoting irrigation and tax shelter investment in cattle production. Then we turn around and spend billions of dollars per year to reduce production. This does not make any sense. This bill does reduce the incentives for tax loss farming. I am convinced that this, in the long run, is going to help our family farmer.

On the other hand, a provision of concern to farmers is the loss of income averaging. I believe it is inherently unfair for families that have, by nature, highly variable income not to be able to average that income. I intend to work for the restoration of income averaging for those whose income is variable due to natural causes, like weather. I hope income averaging will be restored in the next Congress.

Mr. President, the bill is a mixed bag for farmers but on the whole, I believe there are more pluses than minuses, and I believe there will be changes in the next few years that will make it even better.

I am also concerned about the impact on rental housing. There are young families who cannot afford to buy their own house. I am afraid this bill may cause their rents to increase. I hope this does not happen. If it does, I think we are going to have to address this issue in the next Congress also.

As far as the transition rules go, I compliment Senator METZENBAUM for flushing those out and pointing out some of the money inequities in these transition rules.

Let me end by saying if I thought we would have to live with this tax bill for the next 10 years without any changes, I would vote no. But we all know—we all talk about it in the corridors, we talk about it in the Cloakrooms to one another—that we are going to have to make modifications in the next Congress: That being so, I would rather start from this bill as a baseline than from the present code. That is the final reason why I will vote yes.

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

Mr. HARKIN. May I have 1 more minute?

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, I yield 3 minutes to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, I am enormously proud of this bill and of the Senate today. In approving this conference report, we will be ignoring the screams of special interests, ignoring party labels, and doing something good for America. This is the most significant tax bill since the code was enacted in 1913. It will be a powerful force for growth in our economy and equity in our society. No longer will people invest money to lose it for tax purposes. They will invest in things that have real value in the marketplace.

No longer will tax subsidies cover up inefficient management. As a result, the economy will be healthier, leaner, more competitive.

No longer will people in poverty pay more in taxes than some millionaires. Some low-income families will pay as much as $1,000 less in taxes next year.

No longer will middle-income families pay a higher tax rate than some multibillion-dollar corporations. No, all corporations now will have to pay their fair share. And middle-income taxpayers will get a 15-percent rate while keeping their most important deductions. Over time, as middle-income taxpayers, earn more money, the 15-percent rate will mean that they will keep more of the money that they earn.

Mr. President, the adoption of this conference report should give the American people confidence—confidence in Congress, in us, that, yes, we can get ourselves together and act on a very complicated issue with powerful forces on all sides; confident that we will be able to deal with the other economic problems on our horizon, whether it is exchange rates, third world debt, the budget deficit, or trade legislation. Having done tax reform, those will seem more possible.

Mr. President, it has been an enormously satisfying experience for me to see this idea enacted into law. One person cannot be responsible, but many people working together are responsible—Senator PACKWOOD, Senator LONG, Representative ROSTENKOWSKI, President Reagan, and many, many more. What the experience tells me is that if you work hard and work together, if you think a problem through and think about how to communicate, how it affects people's lives, you can overcome the most entrenched interests and the greatest obstacles.

Mr. President, that has to be the right feeling to have about the political process and our democracy on this special day.

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

Mr. LONG. Mr. President, I yield 1 minute to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I spoke at some length yesterday and shall make only the briefest statement today.

First, there has been some discussion of transition rules. I would like to record that on the day the conference report on this legislation was filed, I released a statement of all the transition rules that I have been associated with, and have had no comment since regarding them.

Second, I simply restate my view that this is not economic legislation, it is not a revenue measure, it is by contrast a profound statement concerning the requirements of citizenship and the ethical basis of the American Republic.

I thank the Chair.

Mr. LONG. Mr. President, I yield myself such time as I require.

It has been my privilege to serve in the Senate for 38 years. Only three Senators have served longer than that. During that 38 years, for 34 years I have served on the Senate Committee on Finance. For 15 of those years, I served as chairman of that committee.

Mr. President, in my judgment, this bill should be viewed as part of a moving scene because that is what America is. It is part of a continuous, ongoing process. Viewed in that light, this is one of the best revenue bills I have seen in the 34 years I have served on the Committee on Finance.

While it leaves some things to be desired, the good features so enormously outweigh those that will be changed by necessity over the years that I am very happy and proud to vote for it. I congratulate our very able chairman, Mr. PACKWOOD, and all our cohorts who worked with him, on the magnificent job they have done.

□ 1540

The people of Louisiana are at the polls right now voting on my successor. I am retiring after 38 years, and I am satisfied that we leave the Nation in very good hands—the hands of our manager and our present chairman. In my judgment, Mr. President, Mr. PACKWOOD will move along from this to still greater achievements and will be the most outstanding and renowned—and justly famous—person ever to serve on the Senate Finance Committee. I look forward to reading about his exploits in the future.

EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS)

Mr. President, as part of the tax reform bill, the conference committee adopted several amendments which advance the goal of expanded capital ownership through the use of employee stock ownership plans [ESOPS].

During Senate consideration of the tax bill now before us, I called for a rollcall vote in support of those particular amendments and in support of the employee stock ownership amendments enacted in 1984.

My reason for doing this was to identify Senate sponsors and supporters of the concept of encouraging the use of techniques of finance that broaden the base of ownership, and particularly those techniques which promote employee stock ownership. I am happy to report that the vote was a unanimous 99–0, and that the sole absent Senator was one of the 72 original cosponsors of the measure.

Mr. President, I have engaged in a legislative labor of love concerning employee stock ownership—believing that we in the Congress have an obligation to expand capital ownership opportunities to as many Americans as possible, and particularly expand those opportunities to working Americans.

With that in mind, I have sponsored a series of amendments over the years designed to advance this idea through the use of a technique of corporate finance known as the employee stock ownership plan [ESOP].

I am happy to report that, although there is much yet to be done, ESOP's are beginning to have an impact—with more than 10 million employees now participating in ESOP's in more than 7,000 corporations nationwide.

Mr. President, I am convinced that this Nation and this Nation's economy would be much improved if we in the Congress made a point of ensuring more widespread participation in capital ownership. We would have a far more equitable system, a far more productive and competitive economy, and an economic system that those we oppose would find far more difficult to malign.

Working Americans would be better off, the American workplace would be a better place to work, and American families would be more financially secure.

Encouraging the use of financing techniques that expand capital ownership can only result in a better America. That approach can create economic autonomy and personal dignity, and foster social and cultural harmony. In addition, such an approach can engender a renewed respect for private property, and a sense of thankfulness and gratitude for this wonderful Nation in which we live.

I am convinced that a large measure of employee ownership would make us a stronger, more cohesive Nation. And our Nation could once again offer a new vision and a new leadership to a world desperately in need of both.

I am honored that every Member of the Senate joins me in support of this concept. I hope that as I depart other Members will take on the challenge of expanding the incentives for more widespread participation in capital ownership.

Mr. President, I ask unanimous consent to insert in the RECORD at this point an explanation clarifying certain

aspects of the ESOP amendments included in the bill.

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

EXPLANATION OF THE ESOP AMENDMENTS IN THE TAX REFORM ACT OF 1986

FACILITATE ESOP FINANCING

As added by the Deficit Reduction Act of 1984 (DEFRA), present law permits an employer to deduct the cost of dividends paid with respect to stock of an employer that is held by an ESOP, but only to the extent that the dividends are actually paid out currently to employees or beneficiaries as taxable income.

In order to accelerate the repayment of ESOP loans, the amendment permits a deduction for dividends on employer securities provided such dividends are used to make payments on an ESOP loan. This amendment was sponsored by 49 Members of the Senate in 1983 and approved by the Finance Committee in 1984.

The amendment also enables employees to more quickly begin receiving company dividends as those ESOP loans would be more rapidly repaid. Thus, this provision should have a positive effect on employees' identification with their employer, with corresponding effects on motivation, dedication, productivity, profitability and tax revenues.

In addition, this provision should enable employees to benefit from the widespread practice of companies repurchasing their stock. Because ESOP dividends are not now deductible until stock is allocated to employees' accounts as an ESOP loan is repaid, companies are encouraged to repurchase their stock without an ESOP and retire the shares, thereafter having to pay no dividends. This provision should make it more likely that such stock repurchases will be financed using ESOPs as the technique of finance.

Under current law, such dividends are deductible with respect to employer stock allocated to participants' accounts as of the date of distribution, but only to the extent that such dividends are paid out currently to employees. Under this bill, an ESOP company could claim a deduction for dividends paid on either allocated or unallocated employer securities if those dividends are used to repay an ESOP loan incurred to acquire the employer securities on which such dividends are paid.

I would also like to point out that the Conference Agreement indicates that such dividends must be reasonable and that they not constitute an evasion of tax. In determining what this means in an individual case, I would like to again address the philosophy behind the deduction for ESOP dividends as explained in my November 17, 1983 statement in which this concept was addressed at some length.

Although in the 98th Congress we only enacted the deduction for ESOP dividends paid out to employees on a current basis, that statement explained the rationale for the deductibility of ESOP dividends whether used to repay an ESOP loan or paid out as a "second income" to ESOP participants and beneficiaries.

Mr. President, the U.S. government is, in effect, a partnership in profit with the private corporation (to the extent of the corporate income tax). The ESOP financing concept suggests that as more working Americans become stock owning partners in the Nation's productive might, government's stake in that profit should be phased out and instead shifted to the individual level.

ESOP dividend deductibility achieves that result to the extent that a corporation's stock is held for employees in an ESOP and the sponsor company either pays out its earnings and profits on a current basis to its employees or applies those earnings and profits to repay an ESOP loan.

This approach also helps to insure that the employees, on whose behalf the stock is being acquired, will realize a fuller payout of the earnings on the capital underlying their ESOP stock. During the period that the ESOP trust is paying for the employees' stock, sponsor companies may wish to pay out only a portion of the dividends, utilizing the balance to repay the ESOP loan more rapidly. Alternatively, employers may choose to utilize company earnings and profits to more rapidly repay an ESOP loan, thereafter paying dividends to employees once the loan is repaid.

Numerous studies have demontrated a strong correlation between employee ownership and employer profitability. This provision provides ESOP companies with a means by which such increased profitability can be made to reach employees—either in the form of an ownership income or in the form of increased capital accumulation in employees' ESOP accounts.

If working Americans are to learn to truly understand and appreciate the value of capital ownership, that ownership should be designed to have some direct effect on their lives. As Ronald Reagan explained in advocating this tax policy in February of 1975: "an ever-increasing number of citizens thus would have two sources of income—a pay check and a share of the profits."

Encourage sales to ESOPs and reduce estate taxes

The bill allows an exclusion from an estate for 50 percent of the proceeds realized on an estate's sale of stock to an ESOP, thereby allowing an executor to reduce taxes on an estate by one-half by selling the decedent's company to an ESOP or to a worker-owned cooperative. Under the bill, certain penalties apply if any portion of the assets attributable to employer securities acquired in such a sale accrue or are allocated for the benefit of a decedent who makes such a sale or a family member of the decedent or any person owning more than 25 percent of the stock of the corporation.

As with the previous provision, this concept was sponsored by 49 Members of the Senate in 1983, including 14 Members of the Finance Committee, and was approved by the Committee in 1984. This amendment to ESOP law should encourage sales of companies to employee stock ownership plans.

In addition, it should help reduce estate taxes. The only real purpose of the estate tax is to break up large accumulations of capital. Tax relief is appropriate for the estates of those who assist others in accumulating capital—particularly when they help those who helped them accumulate that capital. I was disappointed to see the House conferees insist on a 5-year sunset on this provision but I am hopeful that it will be extended before it expires.

ESOP loans

Under current law, banks, insurance companies and commercial lenders making ESOP loans may exclude from their income one-half of the interest earned on such loans. This provision was sponsored by 49 members of the Senate and enacted as part of the Deficit Reduction Act of 1984. The provision is intended to encourage ESOP lending not only by existing commercial lenders but also is intended to encourage those with money to lend to enter into the lending business solely for the purpose of making ESOP loans.

This tax reform bill expands on this concept in two respects. First, the provision designating which lenders are eligible for the 50 percent exclusion on ESOP loans is amended to include loans by regulated investment companies (better known as mutual funds). The amendment intends that the tax treatment accorded such income be permitted to "flow through" to shareholders of the mutual fund under rules analogous to the treatment of tax-exempt income paid on certain Government obligations.

Second, the bill provides that the exclusion is also available with respect to a loan to a corporation to the extent that, within 30 days, employer securities are transferred to an ESOP in an amount equal to the proceeds of the loan and such contributions are allocable to participants' accounts within one year after the date of the loan. In addition, the total commitment period of such a loan is not to exceed seven years.

Under these "immediate allocation" loans, companies are permitted to borrow money on favorable ESOP-related terms, provided that such loans are matched by a contribution of employers securities to the ESOP which are allocable to employees' accounts within one year after the date of the loan. This provision is designed to enable companies to borrow money and immediately allocate the stock to employees' accounts instead of requiring a more complex ESOP loan with employee allocations and employee dividend payouts delayed until the ESOP loan is repaid.

Extending the interest exclusion to loans by (or held by) regulated investment companies is advisable as mutual funds have now become a major new source of funds, with assets skyrocketing to more than $80 billion from just $20 billion since the ESOP lender incentive was enacted in 1984. In addition, this source of funds should provide additional competition among lenders for ESOP loans—with a postive effect on interest rates for ESOP companies.

Thus, in addition to the competition from those commercial lenders who engage solely (or predominately) in ESOP lending, competition for such loans will now be provided by mutual fund lenders, plus lending provided by banks, insurance companies and other commercial lenders who engage in both ESOP loans and other types of loans.

This bill also clarifies that ESOP loans can be refinanced. In the case of "immediate allocation" loans (described above), and in the case in which an ESOP sponsor's loan to its ESOP is repaid more rapidly than the lender's loan to the sponsor, this bill limits to seven years the availability of the lender's partial interest exclusion. The policy objective of this limitation is to encourage rapid allocation to employees' accounts of their stock by encouraging rapid repayment of the stock acquisition loan (i.e., within seven years).

Thus, in such cases, the bill limits to seven years the "total commitment period" (i.e., the original commitment period of the loan plus refinancings) eligible for the partial interest exclusion. In the case in which an ESOP sponsor's loan to its ESOP is repaid more rapidly than the lender's loan to the sponsor, this 7-year limitation is not intended as a limitation on the period over which

the lender's loan to the sponsor may be repaid. Thus, for example, so long as the total commitment period of the ESOP sponsor's loan to its ESOP does not exceed seven years, the total commitment period of the lender's loan to the ESOP may be for a period longer than seven years without affecting the qualified status of the first seven years of the lender's loan to the sponsor. Of course, the partial interest exclusion would apply only to the first seven years.

ESOPs as a technique of finance

The bill also exempts ESOPs from the ten percent tax on distributions from qualified plans prior to retirement age. This exemption acknowledges that ESOPs are both a technique of corporate finance and an employee benefit plan and, thus, should be distinguished from conventional retirement plans.

The bill recognizes and statutorily acknowledges that retirement is but one of many events that can trigger a distribution of benefits provided under an ESOP. The exemption applies to distributions to the extent that, on the average, a majority of the plan's assets have been invested in employer securities for the five years immediately preceding such distribution. Special rules apply for amounts transferred or rolled over from other plans.

This amendment recognizes that to treat ESOPs as conventional retirement plans would be inconsistent with Congressional intent encouraging their use as a technique of finance. In addition, because this amendment substantially shortens the period over which ESOP accounts must be paid out to departing employees, applying such a tax on required distributions would be harmful to ESOP participants.

Unfortunately, the House conferees on this bill insisted on a 3-year sunset on this exemption. I am hopeful that the exemption can be made permanent prior to that time.

Encourage excess funds to be retained as an employee benefit

The bill also provides an exemption from the proposed 10 percent tax on pension plan asset reversions to the extent that amounts that would otherwise be reversion amounts are transferred to an ESOP.

Thus, under this provision, employers with excess assets in a defined benefit plan would be able to access that cash for corporate purposes without imposition of the 10 percent reversion excise tax provided the cash is used to buy employer securities in trust for employees.

This should help mitigate the fears of those who worry that the proposed reversion tax may lead to less adequate funding under defined benefit pension plans because, with this relief available, employers could recover the excess funds for corporate purposes, albeit at the "cost" of creating more stockholders.

This provision allows employers additional flexibility in their pension plan funding practices. For example, where their plan's investment experience is better than anticipated, or where their actuarial projections result in pension plan overfunding, the plan sponsor may recover the surplus for corporate use.

If the sponsor corporation puts those assets to use for current shareholders, the company would be required to include the reversion amount in its gross income and pay the 10 percent excise tax as provided under the bill. Where, however, the excess is used by the corporation to acquire employer securities for employees in an ESOP, there would be no income inclusion and the 10 percent excise tax would not apply.

Thus, for example, employers may use the excess assets to buy new (or treasury) shares for the ESOP, thereby keeping the funds for corporate use. Or the plan sponsor may buy outstanding shares to fund the ESOP, thereby losing use of the cash for corporate purposes but nevertheless being exempt from the reversion income inclusion and excise tax. Or some combination of the two practices may be pursued.

This option provides a better alternative for employees because reversion amounts could otherwise be used for any corporate purpose, with employees receiving no benefit from the funds originally set aside for their benefit. Thus, this approach ensures that plan sponsors have an incentive to share with their employees the benefit to which the funds were originally put.

The Finance Committee report requires that employers notify their employees that an overfunded pension plan is the source of the funds used to acquire the employer securities for their ESOP accounts. This is intended to ensure that employees realize the nature of employee benefit funding and the various costs and benefits available under the various types of plans.

The provision also requires that at least 50 percent of those participating in the defined benefit pension plan (from which the surplus assets are transferred) be participants in the ESOP to which the assets are transferred. For purposes of determining which pension plan participants are required to be participants in the ESOP, the Conference Report clarifies that only active employees, as opposed to retirees, who are participants in the pension plan need be included.

In the case of a "spin-off termination", the ESOP must include as participants at least half of the employees who were active participants in a pension plan prior to the spin off and who thereafter remain as active employees of the corporation sponsoring the ESOP.

This provision also enables employers to make such funds less attractive (and less accessible) to corporate raiders and leveraged buyout experts. Excess pension assets are often the prize that awaits corporate raiders. Several notable corporate takeovers have been financed in large part by the termination of the target company's pension plan and the use of surplus assets to repay the cost used to take over the company.

This relief from the reversion excise tax is appropriate because the funds are being retained in trust for employers to provide benefits for employees in the form of employer securities.

Thus, it is not intended that a reversion amount transferred to an ESOP be taken into account as an amount of income, rebate, allowance, or other credit received by an employer for purposes of the contract cost principles and procedures of the federal acquisition regulations relating to contract cost principles and procedures. Nor should such reversion amounts be considered as representing an adjustment of previously determined pension costs for purposes of the federal cost accounting regulations relating to adjustments to pension costs.

Under the provision, the amount transferred from a defined benefit plan to an ESOP may be allocated under the plan to ESOP participants immediately, subject to the dollar limits on annual additions under section 415.

Alternatively, the amount transferred may be held in a suspense account pending allocation (provided allocations are made no more slowly than ratably over a seven-year period).

Thus, allocations need not be made up to the full section 415 limitation each year (the limitation governing maximum annual allocations to employees' ESOP accounts). Instead, allocations may be made more slowly. There is no intent to force employers to allocate up to the full Section 415 limit. The funds transferred may also be used to repay an ESOP loan (including interest).

Similarly, stock acquired with the reversion amount (as well as the reversion amount itself, prior to stock acquisition) may be held in a suspense account. When reversion amounts are utilized to repay an ESOP loan (including interest), allocations from the suspense account are to be made no more slowly than ratably over a seven-year period.

Annual additions to employees' accounts for purposes of Section 415 shall be the lower of the cost of the shares to the ESOP or the value of such shares at the time of allocation.

The reversion amount transferred to an ESOP is not includible in the gross income of the employer. Thus, the provision does not require the utilization of ESOP funding deductions under Section 404 because the assets transferred from the defined benefit plan to the ESOP are not treated as a reversion subject to inclusion in the employer's income but, instead, are treated as a trust transfer of plan assets.

Dividends paid on employer securities held in the suspense account are deductible when applied to repay an ESOP loan or when paid out currently to plan participants and beneficiaries proportionate to their account balances (attributable to such amounts).

Amounts held in the suspense account and required to be allocated are required to be allocated to participants' accounts before any other employer contributions to the ESOP are allocated. In other words, during the period that reversion amounts are held in a suspense account, the employer is not permitted to make additional contributions to the ESOP to the extent that the contributions, when added to the amount required to be allocated from the suspense account (i.e., under the ratable seven-year requirement), will exceed the overall limits on annual additions under a defined contribution plan if allocated to participants' accounts.

Thus, for example, an employer could continue to make contributions to another employer-sponsored defined contribution plan (including an employer-sponsored ESOP) provided the amount contributed, when combined with amounts allocated from the ESOP suspense account, do not exceed the limitation provided under Section 415.

Amounts transferred to a suspense account that (due to the limitations on contributions and benefits under Section 415) cannot be allocated to particpants' accounts within seven plan years (including the plan year in which such amounts were transferred to the plan) must revert to the employer and will be subject to the 10 percent excise tax in the year in which such reversion occurs.

Mr. President, this provision is currently subject to a 3-year sunset. It is my hope that employers and employees will see the merit in this approach to employee benefit

funding and will insist that this provision be extended.

Scheduled expiration of tax credit ESOPs

Under current law, employers may claim a tax credit of up to one-half of one percent of payroll provided such funds are used to acquire employer securities for participants' accounts in a tax credit ESOP (better known as a PAYSOP). In order to provide additional incentives for the use of ESOPs as a technique of corporate finance, and in order to make the ESOP provisions in this bill have an overall positive effect on revenues during the relevant budget period, the bill advances by one year (to December 31, 1986) the expiration of the payroll-based tax credit ESOP.

This amendment causes the ESOP provisions, overall, to gain approximately $2.1 billion in Federal revenues in fiscal years 1987-1991.

Mr. President, on this point, according to a General Accounting Office study of ESOPs and related economic trends, the tax credit ESOP accounts for 90 percent of the total tax expenditures associated with ESOP incentives. In addition, roughly 90 percent of all ESOP participants are employees participating in tax credit ESOPs. It is my hope that if ever the Congress revisits the tax credit concept that it will give special attention to the advantages of funding such credits through ESOPs.

For example, this bill repeals the investment tax credit and reduces by 35 percent the tax benefit available through existing investment tax credit carryovers (except to the extent that those carryovers are attributable to the investment tax credit ESOP).

Should the Congress decide, as it has before, to restore the investment tax credit, I urge Members to consider requiring that a substantial portion of such credits be conditioned on that taxpayer-provided corporate cash be used to acquire stock in trust for employees (i.e., in an ESOP).

Under that approach, companies claiming the credit would still have the taxpayer-provided cash with which to make asset acquisitions; only that cash would be used to create capital value not for current stockholders but for employee stockholders.

Restatement of congressional intent

Mr. President, I would also like to briefly address a provision approved by the Senate in its unanimous vote on ESOPs yet dropped in the Conference due not to the merits of the provision but due to concern over Committee jurisdiction in the House.

I have received a number of inquiries concerning this provision, and would like to take a few moments to state for the Record the intent of the Senate provision.

That provision concerns a Congressional Policy provision in the Senate bill, a provision that constitutes practically a verbatim restatement of an Intent of Congress provision agreed to by the House and Senate conferees and enacted as section 803(h) of the Tax Reform Act of 1976.

In order to indicate the substantive identity of the two provisions, Mr. President, the two provisions are reproduced and discussed below.

SECTION 803(h) OF THE TAX REFORM ACT OF 1986

"INTENT OF CONGRESS CONCERNING EMPLOYEE STOCK OWNERSHIP PLANS.—The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, and the Tax Reduction Act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. Because of the special purposes for which employee stock ownership plans are established, it is consistent with the intent of Congress to permit these plans (whether structured as pension, stock bonus, or profit-sharing plans) to distribute income on employer securities currently."

Mr. President, before setting forth the restatement of this provision approved by the Finance Committee and endorsed by the Senate, let me mention why the restatement is not identical to the language approved by the House and the Senate in 1976.

First, the Congress sanctioned in 1984 a corporate deduction for dividends paid on stock held in an ESOP provided the dividends are paid out currently to ESOP participants. Thus, the 1986 restatement omits the sentence from the 1976 Act indicating Congressional intent that ESOPs be permitted to distribute income on employer securities currently (such current income being one of the "special purposes for which employee stock ownership plans are established").

Similarly, the 1976 provision expresses the fear that ESOPs will be treated as conventional retirement plans by the regulatory agencies responsible for the oversight of such plans. That oversight function, of course, is set forth in the Employee Retirement Income Security Act of 1974 (ERISA). Thus, the 1986 provision refers specifically to ERISA. Again, a distinction without a difference.

Also, whereas the 1976 Act refers to Congressional support for the use of ESOPs "to solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees", the 1986 restatement rephrases and summarizes that concept by indicating Congressional intent that such plans "be used in a wide variety of corporate financing transactions as a means of encouraging employers to include their employees as beneficiaries of such transactions." Again, a distinction without a difference.

Likewise, since passage of the 1976 Intent of Congress provision, several additional laws have been enacted further encouraging the use of ESOPs as a technique of corporate finance. For example, since 1976, ESOPs were required as the funding mechanism for 15 percent of the Federal government's funding of Conrail and 15 percent of the Chrysler loan guarantee.

In the interim, legislation also clarified that the Samll Business Administration could channel its funding to small businesses through the ESOP financing technique. Similarly, ESOP companies were granted a preference under amendments to the Trade Adjustment Assistance Act provided they agree to fund 25 percent of any government assistance through an ESOP.

In each of the eight major ESOP-related bills enacted since 1976, ESOPs are described in the legislative history as a technique of corporate finance. Rather than cite the entire list within the Congressional Policy provision, this lengthy list is now appended in a subsequent section in the 1986 restatement.

The Senate bill's statement of Congressional policy follows:

"SEC. 1271. STATEMENT OF CONGRESSIONAL POLICY.

(a) CONGRESSIONAL POLICY.—The Congress, in a series of applicable laws and in this Act, has made clear its interest in encouraging employee stock ownership plans as a bold and innovative technique of finance for strengthening the free private enterprise system. It is the policy of the Congress that such plans be used in a wide variety of corporate financing transactions as a means of encouraging employees as beneficiaries of such transactions. The Congress is deeply concerned that the objectives sought by the series of applicable laws and this Act will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans under the Employee Retirement Income Security Act of 1974, which reduce the freedom of employee stock ownership trusts and employers to take the necessary steps to utilize employee stock ownership plans in a wide variety of corporate transactions, and which otherwise impede the establishment and success of these plans.

"(b) APPLICABLE LAWS.—For purposes of this section, the term 'applicable laws' means the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Revenue Act of 1978, the Regional Rail Reorganization Act Amendments of 1978, the Small Business Development Act of 1980, the Chrysler Loan Guarantee Act of 1980, the Northeast Rail Service Act of 1981, the Economic Recovery Tax Act of 1981, the Trade Adjustment Assistance Act Amendments of 1983, and the Deficit Reduction Act of 1984."

Mr. President, it should come as no surprise to those who have closely studied this matter that the 1986 restatement is not essential and its deletion in the Conference in no way dilutes the effect of the earlier-enacted provision.

My primary purpose in suggesting a restatement of the 1976 provision was due to the thrust of many of the Tax Reform Act's amendments in the employee benefit plan area. In particular, due to this Act's amendments changing the philosophy of many employee benefit plans, the goal was to restate in that context the obvious point made in 1976: ESOPs are not conventional retirement plans.

Instead, that basic point became abundantly obvious from the nature of the amendments approved by both the House and the Senate, all of which were in the nature of further strengthening the ESOP as a technique of finance.

For example, dividends paid on ESOP-held stock will now be deductible to the ESOP sponsor when used to repay an ESOP loan. Thus, in addition to ESOP financing serving to generate current dividend income for employees (due in part to the dividend deduction enacted in 1984), ESOP financing is further favored by a provision now encouraging application of those dividends to more rapidly repay ESOP loans.

Similarly, an exclusion from an estate will now be permitted for 50 percent of the pro-

ceeds realized on an estate's sale of stock to an ESOP, hardly a conventional activity for a conventional retirement plan. Instead, a special purpose employee benefit plan (I.e., an ESOP) is being utilized as a financing technique to encourage stockholders to share their success with those who helped them create that success: their employees.

In addition, amendments were approved expanding the ability of plan sponsors and lenders to utilize the ESOP financing incentives (approved by the House and the Senate and enacted in 1984) whereby lenders are allowed to exclude from their income 50 percent of the interest income earned on ESOP loans.

Also, ESOP are further distinguished from conventional retirement plans by the provision exempting ESOP distributions (including dividend distributions) from the Act's provision imposing a 10 percent additional tax on distributions from pension plans prior to retirement age.

Similarly, the distribution of dividends from ESOPs without the consent of the participant or the beneficiary is not treated as a violation of the involuntary cash out requirements applicable to conventional retirement plans.

Mr. President, it is not my intention to belabor the obvious. I hope that this discussion is useful to those attempting to make sense of the Congressional policy reflected in the incentives for ESOP financing, incentives that appear in both ERISA and the Internal Revenue Code.

The issues are complex because ESOPs are a hybrid, combining tax, corporate, employee benefit and labor law—each of which is a difficult area. In combination, the complexity can make for misunderstandings concerning the overall objective. It is my hope that this statement will shed some much-needed light on this difficult area.

Mr. President, I am delighted to see that the distinguished chairman of the Ways and Means Committee, Mr. Rostenkowski of Illinois, in his September 25th statement on the tax bill (Congressional Record, H8362-63) embraces the ESOP as a financing technique and confirms that when an ESOP is involved in a transaction, it should be treated as a third-party investor.

I am happy to note that in his statement Mr. Rostenkowski indicates that he and Congressman Clay, the distinguished chairman of the Subcommittee on Labor-Management Relations, are in agreement on this point. I agree with their analysis that such transactions should be looked at as economic transactions and that any regulatory oversight should insure that ESOP transactions are scrutinized accordingly.

Let me add, Mr. President, that certainly there is nothing intended, either in the original 1976 statement or in the 1986 restatement, to imply that the fiduciary standards of ERISA should be relaxed in the scrutiny of ESOP transactions.

Far from being incompatible with the fiduciary standards of ERISA, ERISA is carefully drafted to insure that such standards do not inhibit the use of ESOP financing in the pursuit of the ESOP's intended goal: encouraging corporations to structure their financings in such a way that employees become beneficiaries of such transactions.

The recognition by Congress of the special purposes of ESOPs does not exempt the ESOP from the general fiduciary standards of ERISA but, rather, requires that those standards be interpreted in light of the special purpose for which Congress sanctioned its special ERISA exceptions for ESOP financing.

Mr. President, I am particularly heartened to see that Congressman Clay anticipates that the Subcommittee on Labor-Management Relations will be holding oversight hearings on ESOPs in the next Congress. The ESOP financing concept has much to gain from additional study by Members of the House. It is my hope that the subcommittee will give particular attention to the use of employee stock ownership plans in leveraged buyout transactions.

The U.S. economy has witnessed a dramatic increase in the role of such transactions as a technique of finance for transferring ownership of enormous amounts of income-producing capital assets.

For example, mergers and acquisitions totalled $35 billion in 1980; by 1985, such transactions had skyrocketed to $175 billion. Since a primary objective of ESOP financing is to advance broader capital ownership in general, and employee stock ownership in particular, these transactions provide a tremendous opportunity for ESOPs to make significant progress toward achieving their primary goal.

Further, these transactions utilize enormous amounts of capital financing tax benefits (for example, interest deductions, depreciation deductions on the stepped-up basis of acquired assets, etc.). Some would argue that regardless of who owns the enormous amounts of income-producing capital assets transferred in such transactions and regardless of who benefits from the ownership of the capital financed with those tax benefits, leveraged buyouts are per se desirable, efficient and good for the economy. Certainly that is an appropriate area of inquiry, and I would hope that both Mr. Clay and Mr. Rostenkowski would examine that issue.

I cannot help but believe that those transactions would be far more desirable, result in far greater efficiency, and do much more good for the economy and for working Americans if they were structured in such a way that employees in those companies are allowed to become substantial beneficiaries of those transactions.

The only financing technique able to accomplish that goal is the ESOP. It is my hope that the ESOP amendments in this bill will provide additional encouragement for such transactions to be structured to include ESOPs.

Mr. President, the ESOP incentives in this bill go to the heart of what type of economic system we intend to have in this country, and what type of economic system we intend to leave for future generations.

I am convinced that at the heart of what this Nation is about is the concept of widespread economic participation. That participation simply cannot and will not be achieved without financing techniques whose purpose it is to expand capital ownership.

The PRESIDING OFFICER. The Senator from Louisiana still controls the time until the hour of 3:45.

Mr. LONG. I yield to the Senator from Maryland.

Mr. MATHIAS. Mr. President, before the Senate today is the conference report on the tax reform bill. This is the final product of several years of labor by the Treasury Department, the House of Representatives, and the Senate.

There is much in this legislation that commends its passage. This bill removes 6 million low-income families from the tax rolls. It eliminates many of the abusive provisions of the Tax Code that have encouraged individuals to invest in real estate or cattle feed lots or any number of other specific tax favored investments, not for the purpose of making money or providing a necessary service, but simply for the purpose of losing money, and thus reducing their taxes. It includes a strong minimum tax provision that assures that wealthy individuals and profitable corporations will pay at least some taxes.

However, there are also serious flaws in this bill. I have previously outlined my reservations about some of these provisions but I would like to comment briefly on a few of them.

When the 1981 tax bill was passed the proponents argued that lowering marginal tax rates for the wealthiest individuals from 70 percent to 50 percent would encourage savings and these savings would stimulate economic growth that would finance the rate reductions. Between 1981 and today the savings rate of individuals as a percentage of national income has declined from 5 percent to the current 3.2 percent. Now we are told that if we eliminate all the direct incentives for savings and investment and cut the top tax rate from 50 percent to 28 percent that this trend will be reversed. I do not believe that recent history provides much support for this economic theory.

The bill eliminates the long-term capital gains exclusion. This provision will raise the tax on capital gains by 40 percent for wealthy taxpayers and by 100 percent and more for middle-income taxpayers.

The bill also eliminates the investment tax credit and lengthens the depreciation period for capital assets, thus increasing the cost of capital and effectively reducing capital spending in this country. Investment in upgrading plant and equipment is critical if the United States is to be competitive in the world economy.

This bill provides a tax cut for most individuals and many corporations. It is said that $120 billion of the tax burden is shifted from individual taxpayers to corporations. But that is not the whole story. This bill shifts $120 billion from individuals to capital intensive corporations, but it also shifts additional billions in taxes from corporations that are not heavily dependent on physical capital to those same capital intensive firms. In sum, it requires the manufacturing sector to finance tax reductions for the rest of the economy.

Unfortunately, manufacturing is the sector of the economy that faces the stiffest foreign competition. Manufactured products move in great volume in the world market. Raising the cost of capital to American manufacturers

will make them less competitive in this world market. I fear it will increase our imports and decrease our exports at a time when our balance of trade is already at record deficit levels.

Neutrality among investments is one thing; indifference to investment is quite another. I believe that the elimination of the capital gains differential, the elimination of the investment tax credit and the lengthening of depreciation periods taken together will result in less investment, less productivity growth, and a further erosion of the American balance of trade.

Finally there is one last point I would like to mention. That is the question of the revenue effects of this bill. The proponents claim that the bill is revenue neutral, that it will not increase or decrease revenues over the next 5 years. I hope they are correct. Too many of the provisions designed to raise the revenue being lost through rate reduction may not provide the revenue that has been estimated through the static analysis used by the tax committees.

Every Senator knows the consequences if our hopes are dashed and our fears realized. The reconciliation process we have just completed showed how hard it was to find a combination of $15 billion of spending cuts and revenue increases without raising taxes. If the revenue estimates for this bill are overstated by only 1.5-percent, we will have to make cuts of $15 billion every year to make up that estimation error. This burden will be added to the deficit reduction task we have imposed on ourselves under Gramm-Rudman-Hollings. The revenue estimates on this bill have changed over the past months in response to changing economic projections. A 1.5 percent error is well within the realm of possibility.

These and several other provisions, including the restrictions on the deduction for mortgage interest for the first home; the dramatic changes in tax treatment for universities; the elimination of the deduction for interest expenses associated with educational expenses; and the change in the tax treatment of pension income for individuals who have already retired and for those who will retire over the next few months are cause for grave concerns.

I commend those who have labored so long in the vineyard of tax reform. In many respects, the final bill is an improvement over existing law. In the last analysis we must conclude that it is sufficiently better than existing law to justify the risks it entails for our economy in order to justify and affirmative vote.

I strongly support tax reform and will continue to do so. But we cannot afford to make an error. Our economic situation is too uncertain, our foreign trade deficit is too high, and our Government deficit is too large, for us to close our eyes and hope for the best.

On balance, it would seem that we should embrace the benefits of this bill while they are available, with a clear understanding of the problems it may either create or aggravate and with a firm intention to monitor them closely and to correct them as they develop.

On that narrow basis I shall vote in favor of adoption of the conference report.

Mr. HOLLINGS. Mr. President, it would be naive to expect a bill of this sheer size and scope and ambitiousness to be embraced with enthusiasm in all its thousands of particulars. The fact is—like so many of my colleagues—I am troubled and ambivalent about this much touted tax reform.

On the plus side, we have before us a bill that lowers marginal rates, eliminates wasteful shelters, and removes millions of the poorest Americans from the burden of taxation. At the same time, I regret that this bill is potentially harmful to the international competitiveness of U.S. industry, and that it does absolutely nothing to lessen the deficits that are slowly corroding our economy.

Mr. President, if the Senate rules would permit it, my druthers would be to vote "maybe" on this tax reform bill. But we were not sent to Washington to play Hamlet. I intend to vote "yea" on this bill, realizing full well that next year or the year after, this body will be obliged to reform the reform—to undo certain ill-considered provisions of this bill.

I would urge my colleagues, however, not just to consider the abundant pluses and minuses in these 925 pages, but also to answer these questions: Is the status quo acceptable? Can we continue to live with a tax system where—between 1981 and 1985—130 major U.S. corporations payed zero tax on $73 billion in earnings? Indeed, those corporations got $6 billion in rebates, mostly through accelerated depreciation and investment tax credits. Can we continue to live with a tax system where the size of your tax payment is determined primarily by the cleverness of your tax accountant? Can we continue to live with a tax system that is so studded with inequities that it breeds public cynicism and encourages cheating? Mr. President, we cannot.

Mr. President, we have a duty to look at the broad sweep of this tax reform. Particulars aside, this bill accomplishes two significant reforms.

One, it creates a tax system with significantly lower rates and a broader, fairer tax base. It ensures that corporations and wealthy individuals will pony up their fair share of taxes, so that some 6 million of the poorest families can be taken off the tax roles entirely. At the same time, this bill gives us the industrial world's lowest top rate of personal income tax, and that will act as a powerful spur to work and initiative.

This bill also enacts a second major, overarching reform: It reasserts that the income tax's primary purpose is to raise government revenues, not to serve as a tool of social and economic engineering. It creates a framework where the marketplace will come to exercise more influence over our working, savings, and investing decisions, while the tax code will exercise less.

As well all are aware, the hundreds of tax shelters and preferences in the current code encourage Americans to channel their money into so-called investments in everything from windmills to jojoba beans. Our cityscapes are littered with see-through office buildings—highrises without furniture or tenants that the current Tax Code nonetheless renders profitable. It is high time we did away with these wasteful, nonsensical tax preferences.

I repeat, this bill offers important, long-overdue reforms. But it also contains provisions that range from the ill-advised to the downright dangerous.

I would cite several obvious flaws and inequities in this bill:

Ending the two-earner deduction: By repealing the two-earner deduction for married couples, this bill reinstates the marriage tax. The Federal Government should not preach about the virtues of family life, then turn around and penalize people via the Tax Code for getting and staying married.

Limiting IRA deductibility: The deductibility of IRA's gives individuals a powerful incentive to save and to provide for their retirement. It is a mistake to slam the door on a program that has been so successful and that has served such an important public purpose.

Ending deductibility of charitable contributions: There could not be a worse time to end the deductibility of charitable contributions by taxpayers who do not itemize. Common sense tells us that this will shrink contributions and do harm to the countless churches, synagogs, social agencies, and research groups that rely on private giving.

Increasing taxes on capital gains. The heretofore preferential tax rate on long-term capital gains recognizes the risk and inflation that are built into such investments. By raising the tax rate on capital gains, we will discourage investment in vital industries such as timber and real estate.

Taxing Federal retirees' lump-sum pension payments. It would be a double-cross to turn around and tax lump-sum payments to Federal retirees that were earlier authorized to be tax free.

Mr. President, I also have two broader concerns with the tax bill. First and

foremost, I am concerned that this tax bill does nothing to lessen the deficits that are slowly choking our Nation's economy. This bill is revenue neutral, but there is no virtue in neutrality in the face of these killer deficits.

My second overall concern is that—to make possible the lower personal income tax rates—this bill saddles corporate America with $120 billion in additional taxes over 6 years, while also ending investment credits and preferential treatment of capital gains. I fear that this is simply robbing Peter to pay Paul. And, more serious, it could impair the ability of our industry to achieve price competitiveness in international markets.

That said, Mr. President, I have no doubt that the good in this bill outweighs the bad. We will have opportunities in the next Congress to revisist this legislation; where necessary, we can reform the reform.

This bill offers the prospect of a tax system with lower rates, a broader tax base, more efficient investment, and reduced tax avoidance. This is a historic opportunity, and we must seize it—want and all.

Mr. BINGAMAN. Mr. President, I would like to add my strong support for the adoption of the conference report accompanying the Tax Reform Act of 1986 now under consideration and urge its adoption by the Senate.

As we all know, the bill is not the same as the one that passed the Senate on June 24, by a vote of 97 to 3. It is a compromise that adds certain positive as well as negative features to the original bill.

Among the major differences between the Senate bill and the conference report are these: First, the corporate tax rate, the top individual tax rate, and the alternative minimum tax for individuals were each raised by one point in conference; second, the effective date of the tax cut for individuals in 1987 was moved forward; third, the IRA deduction was preserved up to income levels that cover 80 percent of taxpayers, and partially preserved for some others, when the employer of a taxpayer provides a retirement program; fourth, the partial deduction for sales taxes was eliminated; fifth, depreciation schedules were made less generous; sixth, tax preferences for a number of specific industries were scaled back or eliminated; seventh, the floor under itemized medical deductions was lowered from 9 percent to 7.5 percent; and eighth, income averaging for farmers was repealed.

Some of the changes will importantly affect many people. In my home State of New Mexico, the elimination of the deductibility of the sales tax will have a negative impact, because New Mexico relies heavily on sales tax revenues. My State relies on sales taxes more than any other State—72.8 percent of all its revenues are from deductible taxes. As a result, the repeal of the sales deductions will cost taxpayers 36 percent of their total savings from the full State and local deduction, more than twice the national average. Sales taxes account for 42.1 percent of all State tax revenues in New Mexico. I am therefore disappointed that the sales tax deduction is not retained.

Another troubling feature of the conference version is the restriction of the individual retirement account [IRA] as we know it today. The IRA has been the most effective and efficient savings vehicle ever devised in this country. It has caused millions of Americans to save who might not have otherwise. In 1984 IRA's generated $18 billion in new savings—$7 billion in excess of the revenue loss of $11 billion.

It is estimated that 40 million Americans have IRA's with a total value exceeding $250 billion. And, based on IRS data, 65 percent of all IRA's are held by individuals earning less than $40,000.

The use of the IRA as a tool for retirement has met with great success. Furthermore, we need to continue to do more in this country to encourage savings. I am therefore also disappointed by changes affecting it.

I am also troubled by the uncertain impact this bill will have on the present U.S. economy. Some economists, businessmen, and others are concerned that the tax reform bill, by reducing tax incentives for investment, will slow economic growth and intensify the lack of competitiveness of U.S. industry. Others feel the bill will be good for business and the economy. The real uncertainty, however, is the uncertainty over the economy itself. Unfortunately, no one can predict with much assurance the direction the economy will take.

As in any important matter, there are winners and losers in this legislation, but I believe there are many more winners than losers. Most individual taxpayers and most businesses will be winners. As a result, I think the bill will promote a stronger economy. It should result in a more efficient distribution of resources, because investment decisions would be based on economic rather than tax considerations. These provisions I hope, will serve to make us more competitive as a Nation.

One additional troubling aspect of the bill is the fact that it contains some $3.3 billion in so-called transitive rules. While some of these are legitimate efforts to lessen the drastic impact of proposed changes on cities, States, and corporations, some of them are blatantly unfair new tax breaks. I would prefer that these breaks not be in the bill.

I am also concerned with the retroactive impact the bill will have on new Federal retirees. Federal workers who retire after July 1, 1986, under the bill, will have to pay taxes on their Federal pensions. I feel this is unfair and that the tax itself may amount to double taxation.

Nevertheless, I still feel this bill embodies racial, but needed changes in our Tax Code. I still feel it is a watershed. It still calls for a fairer and simpler tax system. And the changes it makes constitute a real improvement in existing law. As I said in June, I felt this bill was a true rarity and was a bona fide tax reform measure. I still feel that way.

Driving my decision to vote for this bill in its final form is the fact that its defeat would delay for 2 more years, and perhaps longer, any significant tax reform. I also believe that even if we defeat this bill today and start over in the next session with a blank page, there is no guarantee that what we would produce then would be better than the bill we have produced now. Nor will there be any guarantee that what we would produce then would be any better than the tax law now on the books, which all of us agree ought to be reformed.

A number of Members in both Houses of Congress have contributed importantly to the final product now before us. Those members of the Senate Finance Committee and House Ways and Means Committee, in particular, deserve our praise for their work in persevering and bringing this bill through the uncertainties of the legislative process.

The bill represents a major restructuring of the Federal income tax system. It significantly reduces tax rates and broadens the tax base by eliminating a variety of tax benefits and preferences.

It calls for a simplified tax structure, with just three rates. It eliminates the current 14 rates—15 for single taxpayers—ranging from 11 to 50 percent, creating instead only two individual tax rates at 15 percent and 28 percent by 1988. It reduces the top corporate tax rate by one-third to 34 percent. And it severely limits the use of tax shelters.

It is fairer to nearly all Americans. Eighty percent of all taxpayers will have a top tax rate no higher than 15 percent, the lowest individual tax rate in over half a century. Six million working poor will be removed from the Federal income tax rolls entirely. Many other working Americans will receive at least a small tax reduction, and some will receive a substantial reduction. And fairness is restored to the tax system with tough antisheltering and minimum tax rules, including an effective minimum corporate tax.

In conclusion let me emphasize again that there are many positive features of this bill. There are also many negative features. The bill is far reach-

ing and complex in its implications. There are indeed uncertainties about the future performance of our economy and the impact this bill will have on our ability to compete internationally.

But after careful consideration I feel the positives outweigh the negatives and that we should not miss this opportunity for historic changes in our Tax Codes. It benefits millions of Americans and I feel that on balance it will help our ability to compete. It removes certain impediments in existing law and it creates new incentives for encouraging investment and enhanced savings. I feel it warrants the support of my colleagues. I urge its adoption.

Mr. WEICKER. Mr. President, today the historic debate on H.R. 3838, the tax reform bill, comes to a climactic conclusion, and we move to final passage on a measure that one way or another will affect the tax liability of virtually every single taxpayer in America, individuals and corporations, the rich and the poor, savers and consumers, for the next generation. And while none will deny that the bill is nothing short of revolutionary, there are some who have reluctantly concluded, as I have, that the promise of H.R. 3838 is not up to the needs of the Nation and that for all the good it contains, there lurks much mischief. I have therefore decided to vote against this bill, and I would like to outline my rationale.

Mr. President, the people of my State are skeptical about this bill. Public demand for tax reform was generated by the outrage over the fact that many corporations and wealthy taxpayers could legally avoid paying their fair share of taxes. I have consistently supported a tough minimum tax. While H.R. 3838 contains such provisions, we have gone well beyond addressing this tax equity issue and have engaged in an economic experiment, with potentially severe consequences.

I have for some time been saying that the greatest and most pressing economic problem we face is the Federal deficit, which in the fiscal year drawing to a conclusion on Tuesday, will reach record levels of $240 billion. Nothing could be of greater peril for our future growth than the specter of an endless stream of triple-digit billion dollar deficits sapping our credit markets and triggering a spiraling trade deficit. Rather than focusing on changing the tax laws to make them seem fairer, we should be asking how can we change the system to increase revenues to a level approximating our expenditures. Until we get our budgetary house in order, we simply cannot afford to gamble with the revenue side of this already fragile equation. And in the minds of many economists this bill is a riverboat gamble since nobody can say with confidence what will be the economic consequences of H.R. 3838.

The Joint Tax Committee predicts that the new tax law will be revenue neutral over the next 5 years, but even their best estimates conclude that within that timespan there will be substantial fluctuations of revenue from year to year. Next year the bill will actually raise taxes by $11 billion, only to reduce revenues by some $16 billion in both fiscal year 1988 and 1989. So if this bill facilitates our task under Gramm-Rudman-Hollings for fiscal year 1987, when we are supposed to reduce the deficit to $144 billion, it only exacerbates our difficulties in fiscal year 1988 when the deficit targets are far more stringent. How can we possibly live up to our responsibilities to move toward a balanced budget if today we are enacting a law which only increases the deficit in future years?

Now, Mr. President, the fuel that has sparked interest in this bill is the lure of lower rates: Lowering the top individual rate from 50 percent to 28 percent and the top corporate rate from 46 percent to 34 percent sounds good. But in the process of slashing the top rates, we're bulldozing over a generation of deductions and credits many of which achieved important social and economic goals. The question is not whether I support lower tax rates. Clearly I do. However, at what cost are we achieving these rate reductions? Furthermore, how long will these lower rates last? Given the imperatives of the deficit, I fear that our universal enthusiasm for low rates will bow before the need for enhanced revenues, and inevitably we'll be back here raising taxes.

Furthermore, this tax bill calls for a transfer of $120 billion in new taxes to our corporations over the next 5 years, that are currently being paid by individuals. We are in effect raising their taxes by $120 billion while cutting the tax on individuals by an equal amount. This tax increase particularly hits our manufacturing sector the hardest, and comes at a time when we are finding it increasingly difficult to compete in the international markets.

Perhaps my greatest concern with H.R. 3838 is that it will have devastating, perhaps even crippling effects on capital formation especially for small business. As chairman of the Small Business Committee, I am well aware that nothing could be more crucial for the future well-being of the country than the economic health of small business. Small business provides some 80 percent of the new jobs in our country, it makes a substantial contribution to our GNP, and it is responsible for about 50 percent of the innovation. Small business grows through its ability to attract new capital. As far as raising capital is concerned, this bill spells devastation. It eliminates the investment tax credit [ITC], which gives a taxpayer a 10 percent dollar for dollar credit for investments in new machinery and equipment. Here is a vital incentive to invest in the latest state-of-the-art technology, to take a gamble on the future by modernizing or expanding. And that is gone, despite the fact that the ITC has been in place for decades to spur investment, to encourage planning for the future.

In addition, for the first time since 1921, virtually since we began taxing income in 1913 under our first Tax Code, we are eliminating the preferential tax rate for capital gains. Unlike earned income, capital gains have always been taxed at lower rates in part to encourage investments in capital assets, in part to avoid the unfairness of taxing several years of gains all in the year of realization. The capital gains tax differential is a powerful incentive for investing in capital assets; it recognizes the greater risks undertaken by one who invests in the future, with all the inherent risks. It seeks to reward the risk-takers by taxing them at a lower rate than if they had simply been receiving a stream of dividends or cashing in their paycheck. Our system thrives on such risk-taking and now we will upset all tradition in this country by telling investors they are no better off investing in a risky start-up than simply putting their money in blue chips.

Finally I note that a mere 5 years after all the hoopla surrounding the enactment of accelerated depreciation schedules under the economic recovery Tax Act of 1981, we today are backing down and lengthening those timetables for some in our manufacturing base. Of all the areas of our economy that has yet to show any confirmed signs of recovery, the manufacturing base is clearly the most conspicuous. How can we expect relief for all our economic problems with a bill which in the end simply raises the cost of capital for all?

Mr. President, at the onset of debate in the Senate earlier this summer, I chaired a hearing of the Small Business Committee on the impact on small and emerging business of the elimination of the capital gains differential. And I was impressed that almost every witness both from academia and from the world of business concluded that the capital gains differential was crucial for small business and that its elimination would devastate the venture capital industry which provides seed capital to so many of our Nation's emerging companies. Without venture capital so many of our greatest success stories like Apple Computer and Federal Express would still be thoughts on a drawing board.

I am also disturbed that this bill touted in the name of fairness and equity strikes an unpardonable blow of

unfairness on millions of good faith innocent taxpayers who followed the lead of Congress in investing in tax shelters. Oh, I'm well aware that tax shelters have been abused. But today we abandon a longstanding tradition of fair play in this country, retroactively pulling the rug out from under millions of people who may well have made these investments as part of long-term financial planning. They will find that the passive loss deductions that they had counted on are no longer available to be used and they will be left holding the bag. Egregious as the treatment we inflict on them, I wonder about the harm to the reputation of America as a place to invest one's money. Who will trust the word of Congress in the future? What's to keep us from continuing on this merry road of reversing ourselves suddenly to the financial detriment of the people in the interests of raising some quick revenues? Today we seize upon tax shelters; perhaps tomorrow we will serve similar treatment on our bondholders and other creditors.

Mr. President, a country's reputation as a haven of trustworthiness is a precious commodity. Our good name should never be tarnished, no matter what the short-term consequences for a quick fix. The shortcuts we take today will I fear cause us unmeasurable harm in the future.

In addition to these overriding concerns that the bill will have a negative influence on capital formation and on the economy in general, there are other areas of vital concern to me, which will be harmed by the bill. I speak in particular of housing, charitable giving, higher education and savings.

One unintended but predictable effect of this bill will be an adverse impact on rental housing, especially for the middle class. Because of this bill, the cost of ownership of real estate will go up because the marginal rates go down, The incentives to build rental housing also will go down, because those units that do not make a profit will offer no tax advantages to the owners. Therefore, investors will demand higher rents just to break even on their real estate investments. The middle class, the young married couple, the student living in off-campus housing, the blue collar worker who can't afford to own a house, will all see their rents go up by far more than they will see their tax bill go down. They will be the ones unfairly squeezed.

Equally hurt will be our institutions of higher education who find suddenly that they will be cut off from issuing any more tax exempt bonds if they have exceeded the toally arbitrary cap of $150 million, thus limiting a vital source of capital used for construction of university facilities. Additionally, we now require that gifts of appreciated property be included in the minimum tax which means that a number of wealthy donors will be reluctant to give stock or appreciated real estate. Finally, the bill taxes fellowships and scholarships for the first time.

Mr. President, this bill will also have a depressing effect on charitable institutions and on institutions of higher education especially in the private sector. H.R. 3838 calls for the elimination of the charitable contribution for nonitemizers. Most American taxpayers don't bother itemizing; the vast majority will receive no fiscal incentive for the occasional small gift they make to their church or other nonprofit institution. So suddenly the cost of giving goes up and unless there is a dramatic increase in eleemosynary inspiration, giving will decline by virtue of these changes.

Mr. President, this bill is proconsumption. It provides an average tax cut of 6 percent, and provides real disincentives to save that money. I am concerned that this bill restricts the IRA deduction. We expanded the IRA concept in ERTA in 1981 and it has proved one of the greatest successes in tax history. The American people fell in love with the IRA. It let them plan, manage, and supervise their own retirement vehicles, and by bringing them into the details of these savings plans it unwittingly forced millions of Americans to think about their future in a very real way. In this bill, we limit the IRA deduction, especially among those Americans in higher brackets who are the biggest users of the IRA deduction. In the face of clear evidence that we are still not saving enough, last year we saved about 4.5 percent of our income well below the 20 percent current in Japan, we take one further step today to discourage saving and encourage immediate consumption.

Finally, while we are today debating a tax bill for all Americans, this measure will weigh disproportionately on the citizens of my State. Connecticut has the highest State sales tax in the Nation at 7.5 percent; we rely almost completely for State revenues on the sales tax since we have no income tax. Under this bill, however, my constituents would be unable to deduct these tax expenditures. This will in effect raise the cost of all consumer items for them, more than for any other State, since they pay more than anyone else. For those that buy big ticket items such as home appliances, Connecticut shoppers will have incentives to go next door to New York or Massachusetts or Rhode Island where the sales tax is less. Merchants in my State will bear the burden of this new tax bill. Like many, I was disappoined by the original Senate bill proposal to limit the sales tax deduction, and I joined my colleagues in urging the Senate conferees to restore the full deductibility of the sales tax. Their failure to do so has made H.R. 3838 even more unappealing to the Senator from Connecticut.

Mr. President, we could have easily satisfied the clamor for reform by simply devising a rigorous minimum tax law that would have prevented millionaires and profitable companies from escaping paying their full share and still taken the 6 million working poor off the tax rolls without the severe dislocations to the economy that this bill causes. This bill reflects the good intentions of many, but I believe that it misses the mark of the Nation's needs and saddles our economy with so many disincentives for productive real growth that I fear we will soon be revising this act in the 100th Congress.

Mr. CHAFEE. Mr. President, I would like to make a few comments on a new tax incentive which we have put in this tax reform bill—the low-income housing tax credit. This new credit was originally part of the Senate version of the bill, and I am very pleased that it remains part of the conference agreement.

I strongly supported the development of a satisfactory tax incentive to assure the continued development of low-income rental housing targeted to those most in need. Within the targeted group of low-income individuals are persons with disabilities who have historically faced the fewest options in terms of adequate and accessible community-based housing.

In recent years, tax incentives available for the development of low-income housing have helped promote the private development of specialized housing to meet the needs of disabled individuals. In the State of Connecticut, the Corporation for Independent Living [CIL] was successful in utilizing private syndication financing as an alternative to existing government capital funding programs. New, small community-based housing opportunities during the past 3 years were created by CIL for over 600 disabled individuals.

I am pleased that the conference agreement will assure the continued availability of incentives for private individual and corporate support for development of housing to meet the needs of disabled individuals. The low-income rental housing credit will enable an effective response to the critical shortage of adequate and accessible housing needed by thousands of individuals who are poor and severely disabled. Small community based living units such as group homes and independent living apartments would qualify for use of the credit.

Also pleasing is the fact that the conference report clarifies that the gross rent limitation applies only to payments made directly by the tenant,

assuring efficient utilization of any rental assistance payments made on behalf of the tenant such as those provided through section 8. It is my understanding that similar treatment will be given to rental assistance subsidies offered by States to assist low-income individuals, particularly persons with disabilities. It is certainly not in the best interest of Congress to penalize those States who have made their own commitment to expanding housing supports beyond those available through Federal subsidies.

Technological and service delivery advancements, human rights concerns, and litigated mandates have prompted dramatic increases in the development and use of small community-based living situations for disabled individuals. But too many individuals are still consigned to institutional life who are in need of appropriate community-based housing. I would hope that States making decisions about utilization of the credit will respond to this continuing need for specialized housing development for low-income individuals with disabilities. It is also my hope that developers of more traditional low-income housing who utilize this new credit will make an increased effort to develop adaptable and accessible units to serve individuals with specialized needs.

Mr. President, given the massive reforms in this bill and the nature of legislative/political process, it is inevitable that the finished product is not perfect. I have already stated my reasons for enthusiastically supporting this historic tax reform bill, but I would now like to mention one area of this bill which does cause me concern.

The decisions of the tax reform conferees with regard to provisions of the code that encourage support for the activities of the nonprofit charitable sector of this country could cause problems in the future.

Representatives of the charitable sector will be among the first to say that it is too early to know the exact impact of the tax bill on their institutions and agencies. They are deeply concerned that this bill will significantly reduce existing tax incentives designed to encourage contributions to charity, whether that charity is a hospital, a private college or public university, an arts organization, a museum, or some other worthy institution.

The bill could also reduce incentives designed to encourage needy and/or talented students to pursue postsecondary education.

Further, it may, in some States, severely restrict the ability of some major educational and research institutions to borrow money through the tax-exempt bond market to finance the construction and renovation of academic facilities and the purchase of new equipment.

Thus the ability of our nonprofit sector to meet the needs of the public at large could well be diminished. Our nonprofit organizations, which do indeed serve public purposes, will be called upon to meet these new challenges, and I hope they can summon the same resourcefulness and vigor we have witnessed in the past. We should be mindful, however, that we are calling upon them to do so at a time when the congressional budgetary policies of the 1980's have already significantly reduced direct, Federal support for these same institutions and agencies—and thus, for the constituents whom they serve.

Over the years, this country has built a unique and efficient dual system of providing services to the public through the Federal Government and through the Nation's charities. It is important that we, as legislators, monitor the effects of this bill upon those nonprofit institutions and charities. If the results are as unfortunate as some leaders in the nonprofit sector believe, it behooves us to take corrective action. I for one am prepared to do so if required.

Thank you, Mr. President.

Mr. ANDREWS. Mr. President, comprehensive tax reform is a matter which is long overdue.

Our present Tax Code has evolved into a maze of tax deductions, credits, and loopholes which have only helped the rich get richer and the poor get poorer.

While I intend to vote for this historic measure, I do so with reservations about some of the provisions contained in the conference report on the tax bill.

As is true of any piece of legislation of this magnitude, it has some compromising items in it. Its not nearly as fair as the bill we passed in the Senate

Nonetheless, I believe that on the whole this legislation is a giant step in the right direction toward greater tax fairness for the American taxpayer.

In my home State of North Dakota, Agriculture is our No. 1 industry.

As my colleagues in the Senate are well aware, tough times have fallen on rural America in recent years.

When I looked through the provisions in the conference report, I wanted to make sure that this legislation, on the whole would be beneficial to the people on the farms and in the small towns of North Dakota.

While I didn't like some of the things I saw in this conference report, overall it paints a much larger picture of equity and fairness for this Nation.

RETROACTIVE REPEAL OF ITC

Mr. President, I don't believe that the retroactive repeal of the investment tax credit is fair to many farmers and small business people who made equipment purchases earlier this year.

They made their investment decisions based on the law that was on the books at that time.

Retroactive legislation is not good legislation.

REPEAL OF INCOME AVERAGING

While I realize that income averaging is much more important in our present tax system with 14 narrow rate brackets, than in the proposed system which has only two.

Nonetheless, farming is a very cyclical business. Income can fluctuate greatly from year to year depending on the crop yield and the commodity prices. It is not uncommon for a farmer's crops to be hailed out in one year and to produce a bumper crop the next. Farm prices can be equally as volatile.

This is not a loophole for the rich, but rather a tax equity device. Income averaging would still have merit under the tax reform bill.

REPEAL OF CAPITAL GAINS EXLCUSION

Another matter in this bill which I have concerns about is the repeal of special capital gains treatment. Most farmers accumulated their farmland years ago at substantially lower prices, therefore they have a low basis in their property. Upon selling or transferring that property they realize sizable capital gains, due primarily to inflation. Taxing these gains at the same rates as ordinary income could have a negative impact particularly if the sale is made under threat of bankruptcy. This concern applies likewise to the small business owner or the investor.

TAX SHELTER FARMING

While I applaud the efforts which this bill makes to restrict tax loss investments, I have concern about some of the language in the passive loss section affecting legitimate farmers. Although the conference report gives added language on the material participation test for farmers, I don't believe it fully clarifies the issue. I'm not convinced the IRS will have an understanding of what a real farmer is in applying this section.

Mr. President, while I have reservations about these and other provisions in the conference report on the tax reform bill, I find many more items in this legislation which I believe will be of benefit to the typical American taxpayer. By plugging loopholes for the rich and imposing a strict alternative minimum tax on corporations, we are able to cut the top individual tax rate nearly in half from 50 to 28 percent. By equalizing the tax responsibility for all Americans, we are able to assure that the wealthy begin to pay their fair share of tax, while the poor people get a tax break. Creating a tax system which is fair is the greatest deterrent to taxpayer fraud.

Mr. President, I'm a stong believer in our free enterprise system. I believe that letting the average American

keep more of the dollars that he or she earns is the greatest incentive for work, savings and investment. This tax bill will once again allow investment decisions to be made based on their potential for economic profits, rather than their potential for tax avoidance.

While I hope future Congresses will not alter the fundamentals of this tax reform legislation, I cannot help but think Mr. President, that we will have to "fine tune" some of the provisions in this bill within the next few years. Although tax reform may have a few "bugs" in it, overall it's an amazing piece of legislation and I applaud the efforts of the conferees in producing such a work.

Mr. DIXON. Mr. President, I have stood on the floor many times in my time in the Senate and listened to Senators describing passage of a bill as a historic act. The conference report now before us is a bill that truly measures up to that standard. It is landmark legislation. It is nothing less than fundamental reform of the entire Internal Revenue Code.

This is a long and complex bill. The text itself runs 925 pages, and the accompanying report, which only begins to explain the details of this revolutionary bill, is 886 pages in length.

What makes this legislation so important, however, is not its bulk, but rather the extraordinary scope, extent, and character of the changes it makes. There can be no doubt that this bill will touch the lives of every American. There can also be no doubt that this bill will have a significant impact on business and investment, and on our overall economy.

Tax reform has received a somewhat skeptical reception in my State and around the country. Millions of Americans are fearful that they will be paying higher taxes under the bill. Numerous important economic interests and industries believe they will be adversely affected.

I would be the first to agree that H.R. 3838 is far from perfect. I will not take the time of the Senate to discuss all of the areas where I have concerns about the bill. Instead, I would like to simply briefly list three examples where, I believe, many of my colleagues would share my views.

First, I think it was a mistake to eliminate the deductibility of State sales taxes. This change disadvantages States like Illinois that use the sales tax as a major revenue source, and it tends to force States into greater reliance on income and property taxes in the future, since those taxes remain deductible.

Second, I am very disappointed by the way IRA's were treated by the conference. My reason is simple: IRA's work. I do not think it was wise to restrict IRA's and to therefore reduce the savings incentives they provide. I am pleased that the conference product makes fully deductible IRA's available to many more Americans than the original Senate-passed bill. However, I would much prefer to see IRA's fully restored to all Americans.

Third, I think the conference report transition rule for the real estate industry is not adequate. I am concerned that the result of this flaw will be substantial disruption of the real estate industry, leading to inadequate investment in rental housing and higher rents.

These problems and many others I could mention are very serious. However, I think it is important not to lose sight of all the good this bill does. This bill takes over $120 billion in tax liability over the next 5 years off the back of individual Americans. Almost 80 percent of taxpayers will end up with a tax cut. It takes well over 6 million low-income taxpayers off the tax rolls altogether. It ensures that wealthy individuals who were paying either very low tax rates, or even no tax at all, will now pay their fair share. It ensures that corporations who have earned literally billions of dollars in income, but paid no tax, will now pay tax.

The tax relief this bill provides is directed toward low, moderate, and middle income Americans. For example, under this bill, in 1988 people with income between $20,000 and $30,000 will have their overall tax liability fall by 9.8 percent. Those with an income between $40,000 and $50,000 will get an overall reduction in their tax liability of 9.1 percent. People with an income between $10,000 and $20,000 will have their aggregate tax liability reduced by 22.3 percent. Those with incomes of over $200,000, on the other hand, would have their taxes reduced by only 2.3 percent.

These figures make it clear, Mr. President, that the bill preserves the principle of progressivity in our tax laws. It is true that the conference report now before us replaces the current 14-bracket, 50 percent top rate tax system with a 2-bracket, 28 percent top rate system. However, the 50 percent top rate under current law is all too often an illusion, because wealthy taxpayers have been able to use other provisions of law to reduce the amount of taxes they actually pay well below 50 percent. The conference report lowers the top rate, but goes a long way toward ensuring that it is a rate that is effective in fact, instead of in theory. The experts tell me that the bill now before us is just as progressive as the tax system it is replacing.

The guiding principle of this bill, it seems to me, is fairness. Of course, it cannot achieve perfect fairness. But it does significantly reduce the inequities that plague our existing Tax Code. It attempts to ensure that everyone pays tax. It attempts to ensure that people making the same amount of income pay roughly the same amount of taxes. It attempts to ensure that individual and business investment decisions are made for economic reasons, not tax reasons.

It does not do everything. It does not, for example, solve the deficit problem. However, it was never intended to solve that problem. The President made it clear from the beginning that the tax reform effort must be revenue neutral, and that it could not be made into a tax increase in disguise.

I continue to believe that deficit reduction must be our first priority. That is why I supported the Gramm-Rudman-Hollings deficit reduction bill last year. That is why I authored line item veto legislation. That is why I have twice voted for the balanced budget constitutional amendment, and that is why I am continuing to support efforts to further reduce deficits now.

I do not believe, though, that tax reform has displaced deficit reduction as a priority for Congress. I am pleased that we seem to be well on our way toward meeting the Gramm-Rudman-Hollings targets for next year. I think this Congress has taken action to put Federal deficits on a downward glide slope, and I therefore believe that it is not reasonable to suggest that tax reform should not pass because, while it does not increase deficits, it does not reduce them.

We are now at the end of the road. The question before us is no longer how tax reform should be changed. The bill cannot now be amended. Rather, the question is whether this admittedly flawed bill should be enacted. The question is whether the good that this bill does outweighs its problems.

On balance, Mr. President, I have to answer these questions in the affirmative. The bill is not without risk, but the reform it promises is real. I believe this bill deserves to be enacted. I urge the Senate to join the House of Representatives, where this bill passed by an overwhelming vote of 292 to 136. It is time to send this bill to the President, and for it to be signed into law.

REGARDING SECTION 1804 OF THE TAX REFORM ACT OF 1986

Mr. STEVENS. Mr. President, I would like to commend the House and Senate conferees on the tax bill for their heroic efforts and I would like to cite, in particular, the wise decision they made with regard to inclusion of an amendment I sponsored covering affiliation of Alaska Native corporations with other companies. This provision is already beginning to provide the type of benefits and compensation these organizations need. The Native corporations are acting quickly and responsibly to utilize this provision, which will be a great benefit to our State.

The conference report language states that the benefits of these transactions may not be denied, in whole or in part, by application of section 269, section 482, the assignment of income doctrine, or any other provision of the Internal Revenue Code or principle of law. This broad-based relief from unnecessary bureaucratic redtape will serve the social purpose concept I described in my floor statement. The term "principle of law" is to be interpreted broadly and is intended to avoid needless administrative delay, and the applicability of regulations not truly geared to the type of unique transfers contemplated in this amendment. The entities formed or utilized to facilitate the affiliation of an Alaska Native corporation in accordance with section 1804 of the Tax Reform Act of 1986 will not operate in a manner that will be of competitive significance. Indeed, except for whatever minimal contribution is made by the Native corporation, in many cases these entities will be capitalized solely with income assigned to them by other parties to the transaction. As a result, it was my intention that statutes imposing filing and similar requirements that are meaningful for corporations truly participating in the competitive marketplace should not apply to NOL's transactions. For example, the notification and waiting period requirements found in Public Law 94-435, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, should not apply to transactions provided for under my amendment.

I urge all agencies to consider the underlying social purpose of this amendment, and the unique status of Alaska Native corporations, when assessing this provision of the tax bill.

Mr. INOUYE. Mr. President, over a year ago the Congress started on a crusade to reform the Tax Code; to make it more simple, efficient, and fair for all Americans. We set out to quell the widespread dissatisfaction with our tax system, and in so doing, persuade individuals and businesses to make spending, saving, and investment decisions based on economic considerations, rather than tax considerations. Since then, this effort has taken many twists and turns, often apparently dying, only to be resurrected anew. Throughout this process, the unflagging efforts of Finance Committee chairman, Senator PACKWOOD, and ranking minority member, Senator LONG, have been an inspiration to this body and have set an unprecedented example in perseverance. As a result, we stand here today prepared to pass the tax reform bill that most said would never happen.

Unfortunately, in the rush to reach this once seemingly unattainable goal, I fear we have lost sight of the motives that started us on this quest. We have let the drive to pass a tax reform bill take priority over the principles we originally set out to achieve. Reforming the Tax Code has become more important than improving the Tax Code, and slapping together a viable political package has become the goal rather than crafting legislation which is truly more fair and effective for the American taxpayer. Victory at any cost has supplanted the noble ideals which once drove the tax reform effort and have left the victory, I feel, quite hollow.

I will vote against the tax reform bill today, and I will do so with great disappointment. I had high expectations for tax reform when it started, but I cannot with good conscience overlook the major shortfalls I see in this bill merely because of the momentum it has gained.

I feel that in general, this bill is a failure with regard to increased fairness. The progressivity which has always been the hallmark of our Tax Code has been eroded for the sake of simplicity. Under this bill, single taxpayers earning $20,000 a year will pay at the same 27-percent rate as those earning $20 million. As a result, while the average tax cut for all individuals as a result of this bill will be about $200 a year, the average tax cut for those earning over $200,000 will be greater than $5,800. Moreover, for those in this income group who will actually receive a tax cut, they can expect an extra $52,000 a year. This does not represent fairness to me, it represents a windfall for those who least need it.

The economic effects of this tax bill are also, I believe, reason for concern. With the current stagnant condition of the American economy, the radical changes in the business tax structure which are incorporated in this bill, exacerbated by its negative revenue effect and the possible Gramm-Rudman sequester it could trigger, could push us into a recession. Former Chairman of the President's Council of Economic Advisers, Murray Weidenbaum, has estimated that this tax reform bill will result in over 1 million American jobs being lost by the end of the decade. Lawrence Chimerine of Chase Econometrics projects that the measure will lower the growth rate of the economy by 0.5 percent. Many other economists feel the general result of the tax reform bill will be a reduction in investment, economic growth, job creation, and international competitiveness. These are not the goals we set out to achieve in tax reform and it would certainly be ironic if economic recession became the legacy of a tax reform effort aimed at improving economic efficiency.

There are certain provisions of the tax reform bill we are considering today which are particularly troublesome to me. These provisions include the retroactive repeal of the 3-year basis recovery for retirees who contribute to their pension plan. These retirees, most of whom are Government employees, have long contributed to their pension plans, paying taxes with the expectation of receiving these already taxed contributions back during the first 3 years of retirement. Under the tax reform bill, not only would this 3-year rule be repealed, but it would be done so retroactively. Thus workers who retired after July 1 of this year with the understanding that they would be entitled to 3 tax-free years of recovering the contributions they had made and paid taxes on throughout their careers will be told "tough luck." Through no delinquency or oversight of their own, they will find out after they retire that the rules in effect when they retired have been changed and as a result the nest egg they had been working so hard for will be snatched away. For those retirees who opted for a lump sum payment of their contribution under the 3-year recovery rule, this will mean they will suddenly be required to make a large up-front tax payment which was not even discussed when they retired. For many Government retirees, this could result in a previously unexpected tax payment of $20,000 or more. Calling this unfair, I feel, is a gross understatement. Treatment such as this is nothing short of criminal, and it was this provision that finally convinced me to make the difficult decision to vote against this tax reform bill.

Another part of the tax reform bill which is unfairly applied retroactively is the provision relating to passive losses. I would be the first to agree that the treatment of passive losses in our Tax Code needs to be changed to eliminate unproductive tax shelters. However, to penalize taxpayers who have, in good faith, entered into real estate investments based on current tax law is not fair. Moreover, it will have damaging effects on millions of innocent taxpayers; not only those who are involved in the real estate investments, but also those Americans who rent their homes and apartments. Because passive losses will no longer be allowed on existing investments, previously attractive investments will suddenly become disasters and will be defaulted on. These properties will revert to the banks who financed the transactions, putting great strain on them at a time they can ill-afford it. All this could have a chilling effect on the construction and housing industries and cause great hardship to lower- and middle-class Americans whose rents could skyrocket overnight. Former Chairman of the President's Council of Economic Advisers Martin Feldstein has estimated that rents nationwide will rise by 10 percent to 15 percent. This certainly

seems like an unacceptable tradeoff for the average taxpayer who will gain only $4 to $5 a week from tax reform and in return will have to pay significantly more in rent.

There are other parts of this tax reform bill which also give me cause for great concern. I feel the new limitations on IRA's are unduely burdensome on middle-income Americans, especially those who were enticed into making the long-term investment in an IRA by the tax laws passed just 5 years ago. If the national savings and investment encouraged by IRA's was good for the economy then—and it was—why isn't it good for the economy now?

The elimination of the deduction for State and local sales tax is also a matter of concern. Such a policy discriminates against States such as Hawaii which depend on the sales tax to raise revenues. By allowing deductions for State income tax but not for State sales tax, the tax reform bill arbitrarily limits a State viable options in revenue raising. I find this to be a blow to States rights and I find no acceptable rationale for such a policy.

I am also disappointed that the bill before us contains a limitation of the deduction for business meals. By allowing only 80 percent deductibility for business meal expenses, the bill delivers a punishing blow to the hotel, restaurant, and entertainment industries. Charles Clotfelter in the American Economic Review predicted that by limiting deductibility, we would "undoubtedly cause sharp declines in employment in hotels and restaurants." Indeed the Hotel and Restaurants Employee Union estimates a loss of 30,000 to 40,000 jobs over 5 years, and a decline of $56 billion in spending on business meals over this period. This is a harsh blow to this industry which will have serious multiplier effects on other sectors of the economy such as the tourists industry which is, of course, vital to the welfare of my State of Hawaii.

Finally I must express my disappointment that the conference committee has brought us a bill which contains no charitable deduction for nonitemizers. At a time when Federal support for charitable and other nonprofit organizations is diminishing, I find it quite distressing that we are taking this action which will hinder the private fund raising done by these groups. Thirty percent of all individual charitable donations are currently made by nonitemizers, accounting for some $20 billion a year. Prof. Lawrence Lindsay at Harvard has estimated that by eliminating the charitable deduction for nonitemizers, there will be an annual reduction of $12 billion in charitable giving at the lower tax rates in this bill. This represents a 15-percent reduction in giving, which can ill be afforded by the nonprofit groups who depend on this funding, and those Americans who depend on the services provided by these groups; organizations which include churches, synagogues, schools, museums, hospitals, and other groups that help this country's needy. Considering the relatively small revenue impact of the retention of this deduction, which had finally been fully phased in to the Tax Code just this year, I find it disturbing that it has been dropped. I can only hope that in future years we can reevaluate the effect of this action on the charitable groups of this Nation and move to reestablish this sound tool of public and economic policy.

In conclusion, Mr. President, it is with great sadness, yet with great conviction, that I vote against the tax reform bill before us today. I feel our noble efforts to make the Tax Code more efficient and more equitable have gone astray and I cannot merely vote for a principle which I feel has been unfulfilled. I hope to continue to work with my colleagues in the coming months and years to keep pursuing the goals we set out to achieve in this effort over a year ago, and I hope that we will be more successful in forging the kind of tax system all Americans can have faith in. Until then, I feel this body must vote its conscience and reject this good intention gone awry.

Mr. DENTON. Mr. President, I must again state that I would have preferred that the Congress not consider a tax reform bill until the Congress had addressed the Federal budget deficit. I joined several of my colleagues in a letter to President Reagan urging that the Congress address the Federal budget deficit prior to acting on tax reform. The Senate is now ready to vote on the final passage of H.R. 3838.

I rise to express my reluctant support for H.R. 3838, the Tax Reform Act of 1986. I want to commend the chairman of the Senate Finance Committee, Mr. PACKWOOD, the chairman of the House Ways and Means Committee, Mr. ROSTENKOWSKI, and the other members of the conference committee for their work on this bill.

The whole area of tax policy and theory is undergoing intense scrutiny by the 99th Congress, and rightly so. I believe that a tax system that discourages working and saving should be overhauled, and I strongly support efforts to reduce taxes and to simplify our income tax system. We must be careful that in our desire to reform, we do not take any steps that would discourage economic growth.

In too many cases the Federal income tax system needlessly frustrates taxpayers and encourages noncompliance, estimated to cost $95 billion a year, which could otherwise be used to pay off the national debt. In the interest of restoring order to the income tax system, we now have before the Senate the final version of H.R. 3838.

I support the fundamental direction reflected in this tax reform package. Like many, however, I am concerned that the tax bill has serious flaws and may not go far enough to reform the tax system. I have concerns about some specific provisions and believe we will have to give them further consideration eventually.

The elimination of the capital gains deduction is one of the most radical changes proposed by this bill. It has been a fixture almost from the beginning of the income tax system. I am in favor of special tax treatment for capital assets held for long periods of time such as the old family farm, small businesses which have passed from generation to generation and timber which takes several decades to mature. In times like these, some are having to sell the fruits of a lifetime to pay off debts. To tax them at ordinary income rates is simply unfair.

I am particularly concerned about how the loss of this deduction will effect the timber industry and other capital intensive industries. A healthy timber and forest products industry is crucial to the economic growth of Alabama. Timber requires 30 years or more before the timber owner receives income. The tax laws should recognize this unique situation.

I joined several of my colleagues in the Senate in urging the conferees to retain the deduction for annual timber management expenses and to continue the capital gains differential for individuals. While we were able to persuade the conferees to retain the deduction for annual expenses, the conferees unfortunately eliminated the capital gains deduction for both corporations and individuals.

I strongly supported and voted for the provision to restore income averaging for farmers. This provision is needed to aid the family farm. Farmers will need this provision to help them get back on their feet when times get better. I was pleased that the Senate restored income averaging for farmers. I believe the elimination of this provision in the conference agreement is a serious mistake.

I voted for the amendment offered by Senator TRIBLE to restore the 3-year recovery rule. The majority of the Senate, however, supported spreading the tax-free portion of the benefits over the retiree's life expectancy. The Senate bill, however, provided for this change to be phased-in, so that individuals retiring in 1987 would not be affected. I encouraged the conferees to endorse the Senate treatment of the 3-year recovery rule, which was at least fair to those retiring in the near future. Unfortunately, this bill adopts the House treatment

of the recovery rule, eliminating it retroactively to July 1, 1986.

The bill operates as a two-edged sword on tax shelters. It corrects the abuses of the past which allowed many to pay little or no tax at all. I think it may have gone too far, though. People who have relied in good faith on the existing provisions of law that have encouraged people to invest in real estate and other legitimate investments should not be unfairly treated.

The retroactive revocation of these incentives may force some honest taxpayers into bankruptcy. These people have signed notes obligating them to make annual payments for as many as 20 years with respect to projects that can show no profit without the benefit of tax credits and deductions. This action on our part may cause rent payments to rise to such a point that the benefits of the tax bill for many will be wiped out.

I joined several of my colleagues in urging the conferees to reconsider the proposed changes in the Tax Code that would retroactively deny certain deductions for existing investments. Unfortunately, despite our efforts, the conferees agreed to limit the deductibility of certain passive losses. I am pleased, however, that a reasonable transition rule was provided for low-income housing.

This bill includes many important provisions that were threatened with elimination. I believe that the loss of these deductions would have been a mistake.

I have supported the use of IDB's and will continue to do so. I worked with Senator STENNIS and several other Senators to preserve the tax favored treatment to IDB's. I'm pleased that a compromise measure was reached to preserve the special treatment of IDB's; such treatment is essential, in my opinion, to the promotion of economic activity and employment in Alabama and many other States.

I worked extensively to arrange meetings between representatives of certain tax-exempt organizations and Senators and the staff of the Finance Committee to ensure the protection of 403(b) retirement plans. This bill preserves the 403(b) retirement plans for employees of nonprofit organizations. As a result, the retirement plans of our educators, religious leaders, and social workers are safe, ensuring a secure retirement for some of our most important public servants.

I was concerned about the proposed loss of the individual retirement account deduction. The IRA is one of the most important tax innovations in recent history. It provides America with capital and it gives the average citizen some control over his destiny—a small measure of financial security for the retirement years. To eliminate the IRA deduction would have been one of the worst things that we could do to middle-class taxpayers.

I voted to restore the IRA deduction in the Senate tax bill. Unfortunately, the measure failed to pass by a slim margin. However, the Senate did vote for the conferees to give their highest priority to the retention of the IRA deduction. I announced to the full Senate that I would strongly consider voting against the final bill if it did not include the IRA. Fortunately for the people of this country this bill provides for the deduction, by the majority of taxpayers, of amounts contributed to an IRA.

The bill includes many positive changes in the Federal Tax Code. The Senate bill reduces the number of tax brackets from 15 to 2 brackets. The 2 brackets will be 15 percent and 28 percent. Over 80 percent of all taxpayers will be in the 15-percent bracket. I believe that this is a major improvement over the complex Tax Code that currently exists.

The bill also provides for a standard deduction of $5,000 for a married couple filing jointly and $3,000 for singles. An additional deduction of $600 for a married person and $750 for a single person is allowed for an elderly or blind person. In addition, the personal exemption will be increased from $1,080 to $2,000. I have strongly supported increasing the standard deduction and the personal exemption. These provisions are important for all families in this Nation. Especially the elderly who have carried the burdens of this country and given this country so much, they deserve this special consideration.

The bill will also continue several important personal deductions that middle-class Americans rely on to preserve and maintain a strong family life. The bill allows the continued deduction for first and second mortgages. This provision is important to all homeowners and those young people who hope to own a home in the near future.

The bill also continues to a great degree the deduction for State and local taxes. Unfortunately, the bill does not provide the deduction of State and local sales tax. Alabama depends heavily on State and local sales tax and the elimination of this deduction tax will hurt Alabamians.

Charitable organizations have been meeting needs throughout the history of this country—the Red Cross, United Way, and small country churches have all helped. They meet these needs through generous gifts and tithes of common men and women. This bill continues to allow these people to deduct charitable contributions if they itemize. However, nonitemizers are not allowed to deduct their charitable contributions. I wish we would continue this important deduction. I think it helps to encourage giving.

While the tax burden is being shifted from individuals to business under this bill, there are some provisions in this bill that are beneficial to business. One of the most important is the provision that allows taxpayers to expense up to $10,000 of the cost of tangible personal property used in a business. This will lower the tax bill of small businessmen and farmers, helping the businesses to grow—to create more jobs and goods—helping the farmer to get back on his feet.

Serious questions have been raised about the bill's short-term economic impact. Even more concern is raised over its long-range effects on investment. No tax bill will ever be perfect or satisfy everyone. Inevitably, transition difficulties from the old rules to the new will arise. I fear that we will be back next year to solve these problems.

Lowering the top marginal rates, both individual and corporate, is one of two most important benefits of this bill and tax reform. The other is the sweeping away of many artificial preferences and incentives that distort economic decision making. These two changes represent true tax reform and hold great promise for our Nation's economy.

Eighty-five percent of all Americans will only pay 15 percent in taxes. Most importantly, everyone, including corporations will pay their fair share of taxes when the bill is fully in place. Only the very poor will not pay tax, helping these people to better provide for themselves.

The new tax bill represents a revolutionary shift away from the destructive tax philosophy of the past. This is not the last tax bill and it will serve as a starting point for future changes in the Tax Code. It is a significant improvement over what we have now.

To condemn the entire bill because some special breaks are not continued is unfortunate. Even though this bill is not perfect it accomplishes more than what anyone ever dreamed possible when we first considered Kemp-Roth 5 years ago. The important thing is that we are still on a course that holds the possibility of leading us to true reform and simplification.

Clearly the national interest, in the long run, would be better off if the tax system were stable for 5 years or more. However, the excesses and deficiencies of this bill will eventually have to be cured. I am confident that another "technical corrections bill" will pass next year. I am hopeful that any such bill will be another step toward true reform and fairness.

Mr. GRASSLEY. Mr. President, today is a moment of reckoning. Perhaps, for those of us on the Finance Committee, it feels as if the day would

never come. We've heard from hundreds of lobbyists and thousands of constituents. It began over 20 months ago. First came the Treasury proposal, then the President's proposal, followed by the House staff proposal and the House bill, followed by Chairman PACKWOOD's proposal and ultimately a quite different Senate bill. Now we have the conference agreement. There is enough good in this bill for everyone to claim victory for something. But, there is enough that is not so good, to give even the most fervent supporters of tax reform good cause for concern.

The major benefit of the bill are the low rates. Lower rates will make the Tax Code less important in making economic decisions, because all deductions will be worth less. This tax bill will provide the greatest relief for the working poor. Six million taxpayers are dropped from the tax rolls.

There are lots of problems with the conference report. In many areas I would have preferred the Senate version. But the issue now is whether, on balance, the conference report is better than current law. Perhaps, the best way to make that judgment, is to examine how many of our original goals have been achieved.

When the great tax debate began, Treasury and the President spoke of simplicity. Success on that score depends upon how one defines simplicity. Accountants, lawyers, small businesses and those individuals who continue to itemize on their tax returns, will not find complying with the law under this tax bill much simpler. During the transition period it may even be more complex. But the 80 percent of those individuals who don't itemize on their returns will find the tax system simpler. The tax system will also be simpler for those who have spent their energy and their income on sheltering other income. There will no longer be any tax motivated purpose for engaging in uneconomic activities.

Although simplicity for all may not have been achieved, I believe progress has been made in making the tax system more fair. My conversations at home and the pro-tax reform mail I have received suggest that what people want most is fairness. The conference report, drawing on key provisions in the Senate bill restores that sense of fairness. Corporations will now pay tax on their economic income under the new corporate minimum tax provisions. Individuals will no longer be able to shelter economic income by investing in noneconomic passive activities.

American businesses and individuals have made substantial progress toward the goal of leveling the playing field. Under current law, corporations with virtually the same economic income, yet engaged in different activities, can have widely different tax liabilities. This bill will substantially reduce the difference in tax rates among industries. The combined effect of the passive loss rules and the individual minimum tax provisions will have a similar effect upon individuals.

The effect of this tax bill on the agricultural sector will not go unnoticed. The passive loss rules and the limitations on deductions for prepaid expenses for cash-basis taxpayers will substantially reduce the tax incentives which attract outside capital in agriculture. The bill provides much needed relief for farmers facing taxation on cancellation of indebtedness income, arising from the write-down of troubled farm loans. Self-employed individuals, many of whom are farmers, will for the first time be able to deduct a percentage of their health insurance premiums.

In my opinion the conference agreement did not go far enough. I wanted a longer depreciable life for single-purpose agriculture structures. I fear the requirement to capitalize preproductive expenses may introduce complexity in recordkeeping for some farmers. I am deeply concerned about the adverse impact of repealing the capital gains exclusion, the ITC, and income averaging. For farmers lucky enough to be making money, these are the tax preferences that reduce their tax liability the most. The loss of these items may cause some increase in their tax liability in the short-run. For those farmers going out of business, loss of the capital gains exclusion and income averaging could be a problem. Only time will tell whether it was worth giving up these items for what I believe will be a positive effect on agriculture in the long run.

There are some other provisions in this bill that I don't like. While all can agree that the passive loss rules are the right result, I'm sure many of my colleagues share my concern about the retroactivity of these rules. Some relief was provided for low-income housing projects and historic rehabilitation tax credits in the conference report. That is only a partial and inadequate answer for those individuals who have invested in other real estate partnerships, and the banks that hold the mortgages on the property.

I'm quite concerned about the limitation on the deductibility of mortgage interest. A similar provision was defeated in an amendment on the Senate floor. But the conference agreement goes beyond the scope of even that amendment. As I understand it, individuals will no longer be able to deduct mortgage interest in excess of the fair market value or their cost basis in the house and capital improvements, plus loans taken out for medical and educational expenses.

Because the budget deficit remains the No. 1 problem for our economy, I have never been the greatest enthusiast for the tax bill. But I have remained committed to participating in the process, and seeking to achieve the best possible tax bill for the people of Iowa. This bill isn't close to everything I wanted. But in the final analysis, I believe it is a step forward, an improvement over current law.

There is no doubt the progress this bill makes toward putting fairness in the tax system is tempered greatly by provisions the impact of which, simply cannot be known. The massive changes to the Code, and the interaction of these provisions will not be discovered fully until taxpayers begin to file their tax returns in 1988. I have no illusions about this being the tax bill to end all tax bills. I'm sure the Finance Committee will be back at it next session; modifying, correcting, even repealing, portions of this bill. But that is the process. And in the long run, I believe the process works. Adoption of this conference agreement is forward progress in creating fairness in the tax system.

Mr. McCONNELL. Mr. President, as I rise today in support of the Tax Reform Act of 1986, I would like to thank the distinguished chairman and ranking minority member of the Finance Committee for their remarkable efforts and leadership throughout this entire process we have come to know as "Tax Reform." I would just like to make a few brief remarks concerning this legislation, and why I believe it is vital the Senate give its approval and send this bill on to the White House.

Mr. President, this bill will make great strides in restoring public confidence in our tax system by simplifying the tax filing process, removing the incentive to engage in tax avoidance schemes by significantly lowering rates and insuring investment resources are put to their best economic use and not bottled up in unproductive tax shelters. This bill will take 6 million of our Nation's working poor off the tax rolls, giving them an extra incentive to pursue productive employment, and it will place four out of every five taxpayers in the lowest possible tax bracket.

Mr. President, this legislation, which will achieve the most sweeping reform of our tax system in the last half century, offers significant hope for working Americans who believe that our current income tax structure is too complex, too weighed down with special provisions, with rates too high to be fair to most taxpayers. One of the greatest obstacles to voluntary compliance and lack of confidence in our system is that it's just too complex. It is no wonder that 40 percent of individual tax forms and 60 percent of all long forms (1040 forms) are prepared

by paid professionals. As many before me have stated, this bill may not be perfect, but it represents a giant step in the right direction.

Of equal, if not greater importance, Mr. President, is the fact that tax favors which reward unproductive investment will be removed. Significant resources have been denied our Nation's manufacturing sector which could have utilized this capital to improve its competitive position through research and modernization. It is vitally important that we not continue to deny these essential investment resources, particularly in light of the record trade deficits we are now experiencing. Because this capital will no longer be bottled up in unproductive investment schemes, this bill will help to spur small business, which is our Nation's greatest source of job creation and economic growth.

Mr. President, despite the great improvements this bill promises, it is not without its downside. I speak primarily of the bill's retroactive approach in many of its provisions. Most of us were taught that its just not fair to change the rules in the middle of the game. Further, the retroactive nature of this bill will cast economic hardships on many who took risks and devoted their hard earned dollars based on promises the Government made to them. It's too late to change this aspect of the bill, and I hope that something may be done in the not to distant future to help those whose ill fortune it was to place their trust in their Government.

In summary, Mr. President, I would just reiterate that I believe that on balance, this bill is not only in the best economic interest of the country, but offers significant hope for the working poor of America as well as the average taxpayer, who will pay no more than 15 percent of his income in taxes. I believe this bill represents a tremendous accomplishment and successfully demonstrates true dedication to the public welfare.

Mr. GORTON. Mr. President, I would like to direct a question to Chairman PACKWOOD in reference to the statements on page 690 of the Statement of Managers relating to the use of electricity pursuant to certain pooling and exchange arrangements. Power pooling and exchange are universal and essential elements of efficient energy management in the Pacific Northwest and elsewhere. It is my understanding that these statements are not intended to subject such pooling and exchange arrangements to an additional set of tests, but rather simply to identify certain types of arrangements that do not give rise to trade or business use.

Specifically, the Bonneville Power Administration is involved in two types of pooling and exchange arrangements as part of its statutory responsibility to manage the Federal hydroelectric system in the Northwest. The first uses coordination agreements, in which both governmentally owned and investor owned utilities make power available to a power pool. Each utility has the right to draw power from the pool which approximately equals the amount of power made available to the pool. Because of variations in rainfall, snowfall, and runoff, some of these agreements have to utilize a 4-year critical water planning period to coordinate the use of each utility's hydroelectric resources in a manner that is most efficient for the region as a whole.

The second residential purchase and sale agreements mandated by the Regional Power Act. Under these agreements, Bonneville exchanges power with both governmentally owned and investor-owned utilities for the purpose of spreading the benefits of Federal hydroelectric energy to the residential customers of these utilities.

It is my understanding that neither of these arrangements gives rise to a trade or business use of bond proceeds on the part of Bonneville. Is that correct?

Mr. PACKWOOD. Yes; that is correct.

Mr. WILSON. Mr. President, the State of California is fortunate to be one of the foremost producers of agricultural commodities in the Nation. One of the crops that recently has experienced great growth in the California agricultural industry is pistachios.

In the past 10 years, production of pistachios has increased from approximately 300,000 pounds to approximately 70 million pounds. The growth continues as trees that were planted in the late 1970's are now beginning to produce commercial crops.

The pistachio industry has engaged in a progressive program to fight unfair trade practices by the Iranian Government and its growers of nuts and has recently begun to establish itself as an exporter of premium quality pistachios.

Due to a concern that the benefits of the successful trade actions would result in overplanting of trees by domestic farming syndicators, the industry sought a provision in the Tax Reform Act of 1986 that would require the capitalization of preproductive expenses involved in planting and cultivating pistachios. As a result, the House version of the Tax Reform Act provided that capitalization of preproductive expenses incurred in growing pistachios would be required.

Ranchers of other permanent crops who are governed by the uniform capitalization rules and who produce a crop with a preproductive period exceeding 2 years have the right to elect either to expense their preproductive costs and receive an immediate deduction or to capitalize their preproductive costs and depreciate them over the life of the plant—an opportunity not granted to pistachio ranchers.

When the Senate version of the Tax Reform Act was issued it included the requirement that passive losses in excess of passive income could not be used to offset income that a taxpayer received as wages, salary or portfolio income. This provision, coupled with the additional requirement that farming tax shelters could not use the cash method of accounting, will effectively limit the number of syndicators that are interested in becoming involved with a crop such as pistachios, that requires 8 years of preproductive time before a viable product is available for marketing.

In effect, the language of the Senate bill provided protection to all farms from potential overproduction by syndicators.

Upon learning of the terms of the Senate bill, the industry appealed to the House and Senate conferees to allow the continuation of expensing so that the legitimate growers would not be negatively affected by having to deduct the expenses incurred over the 8-year preproductive period. The concerns regarding syndicators were diminished by the restrictions of the Senate bill.

Unfortunately, when the conference report was issued, the language of the House bill requiring capitalization by the pistachio growers was included despite the inclusion of the restrictive passive investment terms.

At this time, it is too late to remedy the inclusion of the capitalization requirement other than to allow the matter to be resolved through the future tax legislation to resolve the pistachio rancher's dilemma.

The pistachio industry seeks only the same treatment that is accorded other permanent crops and requests that consideration of its appeal be given attention in 1987.

Mrs. HAWKINS. Mr. President, the tax reform bill before us here today is indeed a historic piece of legislation. Since 1980 President Reagan has worked to reform our tax laws. In so doing, both houses of Congress have tangled with simplifying and making our current Tax Code more fair and progressive. As the Senator from Florida, a State with no income tax, I've been a strong proponent of tax fairness and simplification for a number of years. However, the tax reform process here in Congress was not an easy one. I was disappointed many times along the way.

I was disappointed when the Senate tax bill eliminated the full IRA deduction, and the State sales tax deduction, last July. I fought with a number of Senators to reinstate the IRA's on the Senate floor, but we only came away with a promise that the issue would be addressed in conference and

it was, partially. The IRA and the State sales tax deduction was not a tax loophole and it was not an abused tax provision. The IRA was a tax law intended to increase savings and it provided 28 million Americans with a supplemental retirement program.

I remain very concerned with the retroactive aspects of this bill. Deductions for investments made over the years in complete compliance and even encouragement of the current tax law will now be eliminated. The Constitution of the United States in criminal matters has never allowed for ex post facto laws. This is perhaps, the provision which concerns me the most, it will be an area which will be revisited in the future and I hope be made more equitable, for its sets a bad precedent. Another provision mistreated in conference was the elimination of subpart F regarding American flag ships. The removal of this provision will severely affect the cruise ship industry in this country. The provision was retained in the Senate bill but was eliminated in the Senate-House conference. It is my understanding that this and the State sales tax deduction provisions will also be revisited in the near future.

While I still harbor some fears over the real progressivity of this bill, it is a historic step in the right direction. This legislation establishes a true foundation for future reform. It does eliminate a number of loopholes specifically, it calls for a corporate minimum tax, under this bill all corporations will pay a tax.

The centerpiece of this reform is the two new income tax brackets of 15 and 28 percent. By eliminating the current 14 tax brackets, taxes will be cut for millions of Americans. The broadening of the tax base reduces the top individual effective tax rate from 50 to 28 percent, the lowest it has been in 50 years, 80 percent of all taxpayers will receive a tax cut of close to 6.1 percent. This is historic and major reform. While it is not perfect tax reform, 6 million of this Nation's elderly and poor will be taken off the tax rolls. Low-income housing deductions are still intact under this bill.

Mr. President, my faith in the Tax Reform Act, hinges not only on the provisions of this tax bill but on the ingenuity of the American spirit, on the industriousness of the American people. Since 1980 President Reagan's reform of our Tax Code has resulted in lower tax rates and soon a new corporate minimum tax. It has resulted in a drop in individual tax rates of close to 40 percent. As this historic debate continues we must not forget that back in 1980 the top individual rate was 70 percent. I feel that in time this new reform will bring about tax simplification, greater allocation of investment resources and new economic growth and fairness.

Mr. HATFIELD. Mr. President, before we vote to adopt the conference report on H.R. 3838, the Tax Reform Act of 1986, I want to briefly discuss my reasons for deciding to support it.

In reviewing this legislation, I have attempted to evaluate each provision in the context of how it fits in the entire bill. As with all legislation, there are provisions in H.R. 3838 I support and those with which I disagree. Ultimately, my decision comes down to whether the advantages of this tax bill, taken as a whole, are greater than the disadvantages. After careful consideration of the conference report, and with confidence in the good efforts of my colleague from Oregon, Senator PACKWOOD, I conclude that they are. I believe this tax bill is superior to current law, and have decided to vote for it.

Mr. President, I have long advocated the reform of our overly complicated Tax Code and have introduced my "Simpliform Tax Act" in every Congress since 1972. Simpliform incorporated five basic reforms: First, broadening the tax base; second, reducing the number of exemptions, deductions and credits; third, lowering the marginal tax rates; fourth, simplifying the Tax Code; and fifth, providing incentives for saving.

Our present Tax Code is hopelessly complicated and burdened with loopholes and special provisions that promote inefficiency and inequity. The cost to the Treasury for the total amount of personal and corporate tax breaks currently in the Tax Code has increased from $36 billion in 1967 to $427.5 billion in 1985. Because of the tendency to expand the size and scope of available tax breaks each time Congress amends the Tax Code, less than half of personal income is currently subject to income taxation.

In the last 32 years, we have come to view the Tax Code not as a means to efficiently raise the amount of money needed to operate the Government, but rather as an instrument of social intervention, as a method of fine tuning the economy, and as a vehicle to subsidize favorite causes and industries. Because of the current state of the Tax Code, taxpayer confidence has been seriously eroded and we are losing the foundation of our tax system: Voluntary compliance.

I am gratified that the tax reform bill before us today incorporates some of the basic reforms contained in my Simpliform Tax Act. By reducing the number of deductions, exemptions and credits, this bill broadens the tax base of every taxpayer. In exchange, the marginal tax rates are substantially reduced to 15 percent and 28 percent, thereby lowering the tax burden for most Americans. Certainly the reduction of the tax rates is the single most important feature of this legislation.

I am pleased that the bill increases the personal and dependent exemption and the standard deduction. These changes, along with an increase in the earned income credit, will eliminate approximately 6 million working poor families from the tax rolls. The significance of this change cannot be understated.

The bill also provides for a new alternative minimum tax for higher-income individuals and corporations, ensuring that all taxpayers will pay their fair share of taxes. Most economists believe that this monumental tax reform effort will benefit our economy in the long run by promoting investment decisions which are based on economic, rather than tax, considerations. Under this bill, our country's capital will be directed toward more efficient uses that have an economic return, thus creating jobs and economic growth, rather than toward those uses which have special tax breaks attached to them.

I do admit, however, that I do not like some provisions in this bill. The elimination of capital gains for individuals and corporations likely will have a serious impact on Oregon's Christmas tree farmers and small woodlot owners. I am certainly concerned about this sector of Oregon's economy and have communicated that concern to the chairman of the Finance Committee. I will be keeping a watchful eye on how this change will affect Oregon's timber industry.

I also disapprove of the retroactive application of some provisions, such as the elimination of the investment tax credit. I am equally concerned with the wide swings in revenue this bill produces over the next 5 years, further complicating our budgetary process. Nor do I believe that a revenue neutral tax bill is appropriate in the face of our immense budget deficits. In fact, we will likely be back on this floor in the near future talking about raising the corporate and individual rates to make up the forecasted revenue shortfalls.

Mr. President, this is by no means a perfect bill; but taken as a whole, I believe the anticipated benefits of this legislation outweigh the suspected costs, and believe H.R. 3838 is an improvement over current law. Therefore, I will vote for the bill.

Mr. STEVENS. Mr. President, as we are now completing our efforts on tax reform I would like to take a few minutes and commend the efforts of Mark Springer of my staff. Mark has been on assignment in my office for the last year as a tax fellow. Mark has worked tirelessly on this bill from its very inception, and in all of its various forms through the conference report that is here before us today. He is highly competent, and among the finest professionals that I have had the pleasure

to work with during my tenure here in the Senate.

Today, on behalf of myself, and the State of Alaska I want to thank Mark for his effort and his competence in seeing our concerns through the end of this process. I would also like to thank Mark's wife Susan, and their young baby Allison for their cheerful tolerance of the late hours that accompanied the work on this bill.

Mr. PRESSLER. On May 27, 1985 President Reagan spoke to the American people from the Oval Office. The topic was tax reform. His speech was filled with hope and promise. Businessmen and individuals alike embraced the President's message. The movement to reform our Nation's Tax Code was begun in earnest.

"I want to talk about taxes;" said the President, "about what we must do as a nation, this year, to transform a system that's become an endless source of confusion and resentment into one that is clear, simple, and fair for all * * *."

Now, almost a year and a half later, Congress nears a final vote on the most sweeping tax legislation in 50 years. Unfortunately, I believe the ideals we set out to achieve have been lost along the way. There is no doubt the bill contains many excellent provisions. However, on balance, the bill does not make the Tax Code clearer, simpler, or fairer.

I support the concept of tax reform. It is a most worthy goal. But, Mr. President, this is tax reshuffling, not true tax reform. I joined with many of my colleagues in various efforts to improve this bill. During Senate consideration, I fought for concepts I believed to be vitally important. Those of us supporting these issues did not carry the day. That is fine. It is how this system works.

I do want to thank the members of the conference committee for working with me to obtain a number of transition rules for projects which are extremely important to my home State of South Dakota. These will serve to mitigate some of the damage this legislation will cause. Unfortunately, Mr. President, a handful of transition rules is simply not enough to convince this Senator we are doing the right thing by allowing this bill to become law. Let me take just a moment to highlight some of my concerns.

This bill will not simplify the Tax Code. It is true that many loopholes have been closed. However, the thousands of new pages of law and regulations that this bill will generate will not make the Tax Code clearer or simpler. I submit that because we did not go far enough in simplification, thousands of attorneys and accountants will create hundreds of new loopholes. This is what I mean by tax reshuffling.

Not only is this a reshuffling, but once the cards are dealt, I do not believe any of us knows what will be in the hand. Every Member of this body painfully remembers the contemporaneous recordkeeping requirement for substantiating business use of automobiles—the "log book" issue.

This provision was included in the Tax Reform Act of 1984—legislation which pales in scope when compared to the pending bill. Yet, many did not know what we had created until the Internal Revenue Service implemented its regulations. I submit, Mr. President, that the Tax Reform Act of 1986 very likely contains hundreds of log book type provisions, and we will be back here next year with the Tax Reform Act of 1987 which will do nothing more than correct the mistakes made in this bill—mistakes we do not even know exist today.

More importantly, the bill fails to achieve fairness. While numerous provisions of the legislation are unfair, perhaps the most glaring example is the section which eliminates the itemized deduction for sales tax expenses, while retaining the deduction for other State and local taxes. This will interfere with the right of States to choose the form of taxation used to raise revenue. The proposal is also unfair in that two taxpayers living in different States, who now pay an equal amount in overall State and local taxes, would pay different amounts of Federal taxes if this becomes law.

U.S. taxpayers would lose an average of 31 percent of their tax savings if this deduction were eliminated. However, because my home State of South Dakota has no personal property or State income tax, we stand to lose 46 percent of our Federal income tax savings. Thus, South Dakotans, who benefit least from the current deduction for State and local taxes according to Department of the Treasury statistics, would be the fifth hardest hit in the Nation under the new tax bill.

Additionally, if the deduction is eliminated, public pressure may mount to hold down taxes and spending at State and local levels. This would come at a time when the budget deficit has caused the Federal Government to require these governments to do more with their own resources.

The loss of this deduction might also result in reduced Federal revenue because States could shift their tax burdens to those taxes which remain deductible. Such a shift could conceivably reduce Federal revenue over the next 5 years by one-quarter of a billion dollars.

Mr. President, I am also extremely concerned about what this bill will do to the Nation's already beleaguered agricultural economy. While those who support the bill argue that many of its provisions will discourage outside investment in agricultural operations by those who only desire the writeoff, many of these provisions may also make things more difficult for legitimate farmers and ranchers.

Under the bill, the preferential treatment of capital gains would be eliminated and these gains would be taxed as ordinary income. This would mean farmers and ranchers would likely see their taxes increase if they sell their land and breeding stock.

The bill would also eliminate Investment Tax Credits [ITC's] retroactively to January 1, 1986. While there is some debate about whether ITC's have, in some cases, encouraged farmers and ranchers to increase their debt load by making unwise investments simply for the tax break, the credit has also served a useful purpose in many operations. In addition, farmers and ranchers would not even be able to fully redeem ITC's which they have carried forward as allowed under present law. Even if ITC's should or must be done away with, to do so retroactively is unfair. I will address the issue of retroactivity more fully in a moment.

Finally, I am troubled by the elimination of income averaging for farmers and ranchers. This has been a very important tax preference for many involved in agriculture as income in this industry tends to fluctuate widely from year to year. This change is estimated to cost farmers and ranchers $300 million. I joined with many of my colleagues during Senate consideration of the bill in supporting a successful amendment to restore income averaging. Unfortunately, the provision was dropped in conference.

Another issue which I wish could have been addressed during this process is the effective dates of the various provisions of the bill. On December 19, 1985, this body passed Senate Resolution 281 which was cosponsored by over half of the Senate. That resolution was an instruction to the Senate Finance Committee on the will of the Senate regarding the effective dates of major changes in our tax law. If I may quote briefly from the resolution:

> Therefore, be it Resolved, That it is the sense of the Senate that the effective date of any fundamental tax reform legislation should generally be January 1, 1987 while recognizing that appropriate transition rules may be necessary to avoid unintended adverse effects both on taxpayers and the United States Treasury and recognizing further that retroactive effective dates may be necessary to extend certain provisions which expire before January 1, 1987.

We all felt we had acted very responsibly when we passed this resolution. Unfortunately, the sentiment it expressed has not become reality. Several provisions contained in the conference package will be implemented retroactively. While these changes may be necessary, it is not fair to change

the rules in the middle of the game. Many taxpayers have made investment decisions this year based on current law. These individuals will now find the implications of these investments to be considerably different. This is patently unfair.

Finally, we all know economists are divided on whether the bill will help or hurt our Nation's economy. Proponents tell us it will lead to capital formation the likes of which we have not seen in decades. Opponents tell us it will add tens of billions of dollars to the Federal budget deficit, eliminate jobs and greatly reduce the amount of capital available to our small and large businesses.

The fact is, Mr. President, this bill is so sweeping that computer models have not been developed which can estimate its impact on the economy. While we have had over a year of extensive hearings on various issues such as capital gains and the ITC, no hearings have been held on what this bill, with all of its sections working in unison, will do. We simply cannot be sure of what we are creating.

In fact, the bill is barely one week old. Without further study, a vote for this bill requires an incredible leap of faith. Given the current state of our economy, do we make the leap hoping we will fly and not fall? I think it is too big a gamble. We should reform the Tax Code, but in so doing, we should be as sure as is humanly possible that it is positive reform.

An extraordinary amount of time and effort has gone into ths process. Let us not be so wed to the idea of reform that we pass a bill which we do not fully understand simply because it has the word "reform" in its title. The risk is simply too great. For the reasons I have just outlined, I regret I have no choice but to vote against this bill.

Mr. CHILES. Mr. President, shortly after we passed the tax bill here in the Senate, I wrote an editorial on tax reform. I was optimistic then that we were embarking on an historic overhaul of our Nation's tax laws. I called it a good beginning. Now, after having seen the conference report, I'm afraid that it was just a false start.

The Tax Code that we have today is riddled with loopholes and special preferences. It needs to be changed. I've always been a supporter of tax reform. I always will be, but I can't support this massive overhaul of the Tax Code when it fails to deliver the promise of true reform.

We promised the American people a tax reform package that was fairer, simpler, and a boost to our economy. I don't think we've kept our promise.

The tax reform bill may be somewhat fairer. That's its most redeeming quality, but it's definitely not any simpler and it takes a big bite out of businesses at a time when the economy is sluggish and the international trade situation is deteriorating. It fails to deal with budget deficit. In fact, it will likely make it worse.

I believe the tax writing committees should be commended for their efforts to restructure the Nation's tax laws. A revised minimum corporate tax will bring many of America's largest businesses onto the tax rolls. The removal of unproductive tax shelters and preferences will equally require the rich to contribute their fair share, as well.

I would like to join with many of my colleagues today to vote for lower tax rates. But I can't. It's hard to vote against lower rates. But I believe that voting for the lower rates in this bill would be unfair to the public. These lower rates are a false promise.

The bill we are debating today is not fair to middle-income taxpayers. It promises they will pay lower taxes in the future. But this bill's revenue loses, $17 billion in 1988 alone, will come back to haunt the average taxpayer, either in the form of higher tax rates or in the form of regressive excise taxes. I don't think that's what the public wants. I'm sure that's not what they're expecting.

This bill does more than ignore the deficit. It worsens it. Gramm-Rudman dictates a maximum deficit of $108 billion for fiscal year 1988. Right now, we are having a difficult time bringing the deficit down to $154 billion. for 1988 the Gramm-Rudman target drops to $108 billion. We'll have a difficult time getting even close. The last thing we need to do now is to legislate an additional $17 billion shortfall.

It's not fair. We would be enacting a hidden tax. A deficit tax. And middle-income Americans will be called upon to pay the tab.

Mr. President, it's been said that the American public is dissatisfied with the current tax system. I believe that. There are lot of things wrong with the current system. But American taxpayers aren't welcoming this new bill with open arms either. They're skeptical. At best indifferent.

Tax reform keeps its promise of fairness—for some. It closes loopholes, cracks down on wasteful tax shelters, and beefs up the minimum tax. It removes the very poor from the tax rolls. Those are laudable accomplishments.

But how fair is tax reform when millions of low- and middle-income taxpayers will actually see their taxes rise? The Joint Tax Committee tells us that almost half of all individuals expected to see their taxes rise, earn less than $30,000. Yet those are clearly not the people who have been skirting paying their fair share of taxes through the use of exotic tax shelters.

How fair is tax reform when the average taxpayer earning between $30,000 and $40,000 receives a tax cut of a couple hundred dollars when the most wealthy individual receives a tax cut of almost 3 grand? How fair is a tax system that taxes middle- and high-income households at the same rate and, in fact, includes a higher marginal tax rate of 33 percent for upper-middle-income individuals, while offering a lower 28-percent rate for the very wealthy?

How fair is it to keep the deduction for State and local income taxes for some States but not the sales tax for others? I have a hard time swallowing that. Eliminating the deduction for sales tax is neither fair nor in the spirit of tax reform. Residents of States like Florida that rely heavily on sales tax shouldn't be singled out to lose a deduction, while taxpayers in States that rely on income tax keep theirs. This summer, the Senate agreed overwhelmingly to my resolution to restore the sales tax deduction. And the bill that went to conference at least saved part of it. It came back empty.

There are a lot of other things that don't seem fair; like the repeal of the 3-year recovery rule. Not only are the rules changed, but the law takes effect retroactively. That isn't fair to our public employees.

Homeowners can take a deduction for interest on student loans. Renters can't. The IRA is deductible for some people, but not for everyone. Certain industries were hit pretty hard. Like real estate. Oil and gas fares a lot better. That's not very even-handed.

Tax reform doesn't keep its promise of simplicity. As one tax expert put it, "One thing this bill won't provide is simplification. * * * If anything, life will be more complex."

There's nothing inherently simple about a two-rate tax structure. Or is it three?

Although there are a few less deductions and credits, there's more floors and ceilings. Blended rates in 1987. A host of phased-in provisions. The tax return won't look any simpler. Taxpayers will still puzzle over the calculations for years to come.

Tax reform doesn't keep its promise of economic growth. It takes a big bite out of businesses—$120 billion over 5 years. I won't argue with tightening the corporate tax provisions, but that could be too dramatic a shift at the present time. It certainly won't help our sluggish economy or trade defict.

The short-term outlook isn't all that optimistic. In the short-run, there could be less investment; a decline in construction activity; less national savings. This bill's corporate provisions may be prudent in the long run, but in the near term they will increase the cost of capital to beleagured U.S. companies who are already confronted with a sluggish economy and intense foreign competition.

Tax reform fails to deal with the budget deficit. At the outset of the tax debate, one of my biggest concerns was that we would undertake this enormous task of revamping the Tax Code without finding revenues to reduce the deficit. Yet, I am afraid that's what happened, and tax reform might even add to the deficit. It seems to me that's the biggest drawback of the package. We missed a chance with tax reform to do something about the deficit.

Tax reforms claims that it's revenue neutral, but there's a lot of us who feel it's actually going to lose money. If that's not bad enough, it dangles savings of $11 billion in front of us in 1987. There are those with blinders on who want to grab that money and apply it against the deficit. They conveniently forget that in 1988 tax reform loses $17 billion. They wouldn't be helping to solve the deficit problem. They would only be making it worse.

I want to make the record clear. I support true tax reform, but I won't endorse an impostor. I won't endorse a mediocre tax bill that may be slightly fairer, is definitely more complex, and is at best inconclusive on economic growth. The tax bill that came out of conference is like being served a bad meal in a fine restaurant. Because our expectations are so high, we're afraid to admit that it's not any good. We're afraid to send it back. I am not.

Mr. GLENN. Mr. President, I rise in support of the conference report, but I do so with some grave reservations. These reservations go further than a mere uneasiness about what the effect of the bill will be. They go instead to the issue of whether citizens can rely on their Government to set fair rules of the game and stick by them.

Let me first talk about the good news in this bill.

When I came to the Senate, I worked with then Senator Muskie, who served so admirably as the first chairman of the Senate Budget Committee, on some of the zero-based budgeting concepts that passed the Senate but unfortunately failed in the House. At that time, we estimated that revenue forgone through tax loopholes, preferences, and incentives amounted to $126 billion, a number we thought was huge at the time.

Through the years it has been very easy for us to vote additional tax incentives, rather than voting additional appropriations to do the same job. But in this decade, the current estimate of revenues forgone—that is, tax incentives and tax expenditures—has grown out of control, to a whopping $478 billion that is estimated for fiscal year 1986.

This is obviously an out-of-control growth that cannot go forward without dire consequences to our economy. It is long overdue for correction in this bill. Regardless of its other provisions, the bill addresses this issue by cutting down significantly on revenue forgone.

It has not been possible to get an accurate estimate of the specific effect this bill will have on reducing losses through tax loopholes. But it is clear that cutting into that enormous $478 billion item, and reducing tax rates, is the only approach that can effectively curb this unnecessary aspect of fiscal and budget policy. This consideration has been the overriding reason for my support of this bill, even though I have very serious reservations about the fairness of some of its provisions.

In any change of policy of this magnitude, I guess we must assume there will be some inequities, and I had hoped they would be kept to a lower level than has been the case with this legislation. In spite of those considerations, however, the paramount objective of reducing $478 billion in revenue forgone must stand as a major achievement of this bill and a major reason for my support.

Another important aspect of this bill is that it will encourage more and more business decisions to be made on the basis of their economic merit rather than on tax considerations. There is no economist who can predict exactly what this bill will do to the economy. However, I believe that good tax policy is also good economic policy, and there is no doubt that the bill before us is more neutral, and contains fewer loopholes and other incentives than existing law.

I realize that there are some economists, even prominent economists, who oppose this bill. They fear that shifting the tax burden from individuals to business, and cutting incentives for capital investment, will harm the economy. While I understand their point, I do not share their fears. We do, indeed, need higher levels of capital investment in our country. Nothing can demonstrate this more vividly than to travel through portions of my own State of Ohio, where millions if not billions of dollars of old capital plant stand idle, made obsolete by someone else's newer capital plant.

However, there is no direct correlation between business tax levels and economic growth. For example, in 1965, corporate taxes stood at 22.3 percent of Federal revenues; they now stand at 8.7 percent of Federal revenues; and the tax bill is not likely to increase this share of Federal revenues by more than 3 to 5 percent—far below the historical burden of corporate taxation.

Furthermore, for every economist that you can quote who dislikes the bill, you can find one or more who speak out in its favor. For example, the renowned economist, Robert Eisner, who has spent much of his career in the study of business investment, has concluded that at the most each lost dollar of tax revenues from the most effective investment incentives in the code gains only 40 cents of added investment.

With its dramatic cuts in marginal tax rates, this bill will significantly raise after-tax incomes of millions of people. It will hopefully increase respect for the Tax Code, because it will ensure that more people will pay their fair share of taxes. For many, it will simplify the horrible prospect of filling out their long forms: the large increase in the personal exemption and standard deduction means that millions more will use the short form. What impresses me most about the bill is that 6 million poor people will be taken off the tax rolls completely. I have always thought it was unfair that many people living below the poverty line had to pay taxes, and this bill corrects that problem to a large extent.

Let me now explain my reservations about the bill.

In several instances, the bill reaches back and imposes a new, sometimes high tax burden on transactions that have already taken place.

This retroactive feature of the bill goes against normal procedure and runs counter to basic concepts of tax equity. In some cases it could impose a heavy penalty on persons who relied on existing law to make substantial financial commitments. It contradicts the practice in previous tax law changes, where Congress has been careful to write transition rules that do not leave investors high and dry with investments that no longer make any economic sense.

Mr. President, let me be direct about this. I support this bill, but I have grave reservations about how it treats people who have made financial commitments using existing law. I would like to see an effective date as the date of enactment, or even next January, for such provisions as the investment credit repeal, and for prospective investments in real estate or other tax shelters. I would like to see the investor protected—especially investors who are required to pay assessments on their investment for the next several years—so that the new Tax Code does not put them into a financial bind. I realize that it is too late to make changes in the bill, but I feel strongly enough about this aspect of the bill to want to go on record.

Mr. President, a close look at the tax bill reveals a number of provisions that are either retroactive or whose effective is retroactive—such as the passive loss limitation rule. That rule, and the investment tax credit repeal, are of course the most highly publicized provisions of this kind. But let me cite some others.

Under the bill, students who have completed several years of education supported by student loans will now

find that interest on their student loans is no longer deductible. Some of these loans may have been entered into long before H.R. 3838 was ever considered. Payments on these loans will extend many years into the future.

Up until now, many Federal employees, and thousands of State and local employees in Ohio, have planned for their retirement based on the effects of the so-called 3-year rule. Often that planning has involved the purchase of Treasury bonds that they will cash in during the early months of retirement, at a lower tax rate than if the rule didn't exist. Now they are being told by their own Government that they shouldn't have made this investment for this reason, and that their plans were wrong.

Under the bill, the limits on tax-exempt financing take place prospectively, but in fact its effect is retroactive. In many instances a community may have worked for years and even enacted new taxes, to finance a project that will now be denied tax-exempt financing under this bill. What the bill does is to take such projects and say, "Sorry, Jack, but you shouldn't have relied on the Government to keep the law as it was. You'll have to go back to the drawing boards and develop your project all over again."

Other parts of the bill that are retroactive in their effect include the changes in the completed contract method of accounting, and the tax credit for historic rehabilitation expenditures. Parts of the bill that are retroactive in law include the repeal of the provision allowing farmers to expense land-clearing expenditures, the limitation on the general business tax credit, gains on the disposition of converted wetlands, and certain aspects of the general utilities rule repeal.

Now I realize that some of these changes had been foreseen—the repeal of the investment tax credit, for example. I also realize that there is a vehicle for easing the pain of sudden shifts in the Tax Code: transition rules. In fact, I am pleased to see that important transition rules that I helped seek—the Cleveland Dome and the Columbus Convention Center are two examples—were accepted by the drafters of the bill.

But what about the person who isn't an expert in tax law and who didn't have lawyers and accountants looking out for him during consideration of the tax bill? And what about the Federal employees who got snookered by the retroactive repeal of the 3-year rule? Frankly, Mr. President, for all the goods things about the bill, and there are many, these cases are so troublesome as to make the bill much, much less than what was originally promised.

I shall vote for this bill, I don't know what it does to my taxes, but I do know what it does for lower income people, for those wealthy people who have paid no taxes, and for millions who have struggled with the long form. But I have some strong misgivings about this bill, and I see that I am in good company, having listened to this debate during the day.

Mr. President, I have misgivings about other parts of the bill that we shall have to watch closely. The changes in the tax treatment of gifts of appreciated property, for example, may be good tax policy on the grounds of making people pay their fair share, but they are bad tax policy so far as our support of charitable giving is concerned. Similarly, denying nonitemizers a deduction for charitable giving is bad policy, in my view, I am a trustee of a liberal arts college in Ohio, and I know how much institutions such as Muskingum College rely for their very existence on tax incentives for charitable giving.

The limits on business entertainment are based, I am sure, on a well-intentioned effort to curb abuses in this area. But what about the firm or individual that has followed the law; this change will not be fair for that taxpayer. Is this tax reform?

The limits on the use of the completed contract method of accounting are also well intentioned. However, because of this reform may tax firms for income they might not have physically received, it means that some firms will have to go out and borrow money in order to pay their taxes. Is this tax reform?

The repeal of the general utilities doctrine was intended to remove an incentive for predatory constructive mergers, but it was done crudely, and removed an incentive for mergers that have kept firm in business and people at their jobs. Is this tax reform?

Mr. President, only God can be perfectly just; and the Tax Code never aspired to that level of perfection. However, we can do something about obvious and avoidable unfairness. I temper my enthusiasm for the Tax Reform Act of 1986, and my pride for the limited share I have had in drafting it, with the knowledge that for some people this will not be tax reform but a tax increase.

Mr. HEINZ. Mr. President, it is not without reservation that I state that I shall vote "aye" on the question of passage of H.R. 3838, the tax reform legislation. The legislation is far from perfect. Many parts of it are less than desirable—some are patently unfair.

Foremost among such provisions is the retroactive denial of certain tax benefits to persons who made economic decisions in reliance on existing tax law, tax law enacted by Congress in order to stimulate specific behavior. Fair-minded people may disagree about the merits of tax preferences contained in the Code, but they cannot disagree that individuals who made good faith decisions based on existing preferences should be protected against ex post facto changes.

Those who invested in real estate ventures, Federal retirees who planned to retire under the exclusionary rule, and others similarly affected, are justifiably angry at the abrupt reversals contained in this legislation. For their government to tell them that they are to be penalized for their actions is, I believe, a breach of faith. The retroactive provisions of this bill set a dangerous precedent.

I strongly support a minimum tax provision that assures that those individuals and corporations that have avoided taxes in the past will pay their fair shares of taxes in the future. I believe, however, that the minimum tax contained in this bill is too broad. As a consequence, many capital intensive, import sensitive industries which make no profits—indeed, suffer yearly losses—will be forced into the minimum tax. They can escape only if they are able to achieve and maintain an extraordinarily high level of profits in proportion to their annual investments in machinery and equipment. The irony of this new minimum tax is that the more a taxpayer spends on capital equipment, the greater will be his minimum tax burden.

As currently drafted, the minimum tax has two rates: a 20-percent rate for the "very bad" companies and a 10-percent rate for the "slightly bad." Under this minimum tax, capital intensive industries such as steel, aluminum, mining, chemical, automobile, paper, railroads, and airlines are all "very bad" for some reason. Yet banks, insurance, and service industries are only "slightly bad." This is clearly unfair.

During the last year I have worked to eliminate many of the injustices of the minimum tax. In particular, changing the depreciation preference and allowing the ITC to be used to offset a portion of the minimum tax liability. While I am pleased that the conference agreement adopted a modified version of my proposals, I do not believe that these changes are adequate to eliminate the impact that the minimum tax will have on our basic industries.

There is no question but that the uncertainty engendered by the 2-year process of completing this legislation has exacted a toll from the economy, and I am among those who will pose major revisions in the Tax Code next year. Nevertheless, I am convinced that the minimum tax provisions contained in this bill will mortally wound the capital intensive and import sensitive industries I have already mentioned.

The minimum tax provision can be changed so that beleaguered indus-

tries are not damaged further while still ensuring that profitable corporations pay their fair share. We will undoubtedly need to visit this problem next year—or face disastrous consequences for the manufacturing sector or our economy. Taxing marginally profitable industries is bad public policy.

Ensuring a tax structure to sustain increases in productivity and economic growth in our basic industries has been a major goal of mine throughout this tax reform process. The repeal of the ITC retroactively was a decision in which I reluctantly acquiesced: However, I did so because the Senate bill improved current law depreciation. As one of the primary authors of 200 percent ACRS, I believed that in the Senate Finance Committee we had developed a depreciation system that would allow our basic industries to compete with imports. While the conference committee adopted the basic structure of 200 percent ACRS, modifications were made to asset lives. These modifications have severely weakened the Senate depreciation system. We need to monitor these changes, to make sure that they will not hamper the ability of our basic industries to compete with imports.

Throughout our deliberations, a primary concern has been the fiscal impact of this legislation. The President conditioned his support for tax reform on revenue neutrality. H.R. 3838 meets that criteria over a 5-year period. However, its year-to-year effect is far from neutral. Tax reform will generate an extra $11 billion in revenue in 1987, but it loses revenue in 1988 and 1989—$17 billion in 1988 and $21 billion in 1989. Revenue swings of this nature ought to concern all of us.

Admittedly, in comparison with total annual revenues of nearly a trillion dollars, yearly variations of $20 billion may not seem significant. The tax losses for 1988 and 1989, however, coupled with Gramm-Rudman deficit targets of $108 billion and $72 billion, respectively, will assure a headlong confrontation with the need to find additional revenues in 1988 and beyond. This almost certainly will ensure a tax increase in the next Congress.

Furthermore, I question whether the massive and overly heavy shift of $120 billion in taxes from individuals to businesses, including the repeal of capital gains, is appropriate given the fragile state of the national economy. By going beyond the $90 billion increase in business taxes contemplated in the Senate tax bill, we unduly stimulate consumption at the expense of savings and investment. A lack of investment in plants and jobs will hamper several important sectors of our economy and this risks making us less competitive in the world marketplace than we already are. Make no mistake, a failure to modernize, to invest in new plants and technology, and to ensure the viability of jobs and industries, will jeopardize our economic security in the years ahead.

There are other changes embodied in this bill that may cause some economic disruptions. The concept of partial deductibility is repugnant; any legitimate business expense should be fully deductible. Our universities and charities are carrying a disproportionate burden of this reform effort as well.

Finally, the bill before us would, unfortunately, make individual savings much less attractive than they are now. Individual retirement accounts, which have increased the public's awareness of the need to save and have stimulated individual savings, will be limited by this bill. I am pleased that the full IRA deduction will still be available for all low-and moderate-income workers, and for all workers who did not have pensions. I am concerned, however, that middle-income couples who have only a small employer pension will not be encouraged to save additional amounts for their retirement.

Having discussed what I think is wrong with this package, I shall now discuss what is positive about it.

The decision to vote in favor of this bill is not an easy one. It is not without trepidation that we sail into these uncharted waters, where no economist, however sagacious, and no computer model, however sophisticated, can predict with certainty how the American economy will react.

Some economic uncertainty is inevitable in any overhaul. However, failure to adopt this legislation today will only add to the already large burden of doubt and economic distrust to generate further uncertainty. For the last 2 years, business investment decisions have been postponed, long-term planning has been paralyzed, growth has been retarded—all businesses and investors have been waiting to find out what changes in the tax law would ultimately be made.

There is much to be said for this bill.

It is the first true reform of the Tax Code we have witnessed since 1913. Serious imperfections aside, we have taken a major step toward economic efficiency. Business decisions should reflect economic conditions in the marketplace, and not the artificial superstructure of tax benefits. Millions of decisions that must be made every day in the private business sector will now begin to center on what makes sense in terms of everyday business demands.

For the first time in years, we will have a Tax Code that is premised on equity. Every survey taken in recent years has shown that the American public believes that the current Tax Code is unjust. The wealthy are able to position themselves to avoid taxes by taking advantage of the host of loopholes in the current law. Our constituents react with anger when they read about wealthy individuals and profitable corporations that pay little or no taxes. They demand a tax system that ensures that all individuals and corporations will pay their fair share of taxes. This bill answers a good many of those demands.

Importantly, H.R. 3838 is the most significant antipoverty measure ever considered. It will take 6½ million working poor off the tax rolls. Moreover, it will reduce the tax burden of those individuals who are above the poverty line but who struggle to make ends meet. It will nearly double the personal exemption, substantially increase the standard deduction, retain the child care credit, and retain indexing for inflation. The favored tax treatment of the family home is protected by continuing the deduction for mortgage interest payments.

For young people entering the work force, this bill will provide the greatest incentive of all: low tax rates. Their labor will produce take home dollars and not be consumed by oppressive taxes. Eighty percent of American workers will be in the 15 percent bracket and will not have a penny of their earnings taxed at a higher rate. This bill also continues the targeted jobs tax credit [TJTC] for handicapped and disadvantaged citizens who have difficulty finding employment. By extending the TJTC, we will tell employers: "Take a chance on these individuals, give them special help, let these people enjoy the self-esteem that comes from gainful employment." we are all the long-term beneficiaries of this employment tax credit.

H.R. 3838 would preserve the historic rehabilitation tax credit which has provided an important incentive to restore inner cities and save national landmarks for enjoyment by future generations. I am proud that my State of Pennsylvania has used this credit in a manner unprecedented elsewhere. Harrisburg, Pittsburgh, and Philadelphia stand as testaments to the value of the historic rehabilitation tax credit.

As chairman of the Aging Committee and as chairman of the Finance Subcommittee on Pensions and Investment Policy, I am very pleased with and proud of the dramatic pension reform package contained in H.R. 3838. That package is based on the Retirement Income Security Act [RIPA] which I introduced earlier in this Congress. As I have more fully explained in a separate statement, the pension reform package in this bill will ensure that the legitimate retirement benefits of the average American worker are protected.

Finally, perhaps the greatest benefit to be gained from the tax reform bill

will be a restoration of the confidence in our voluntary tax system. That alone, it seems to me, justifies our efforts over the past 2 years. Recent times have seen a serious erosion in the confidence of the American people that the Internal Revenue Code was a fair and effective means of raising revenue. This measure will go a long way toward reestablishing that confidence.

Mr. SIMPSON. Mr. President, the question before us today of whether to support or oppose the conference agreement on H.R. 3838 is one of the more difficult decisions I have had to make in my tenure in the U.S. Senate. Unfortunately, we are not afforded the luxury of voting "maybe."

I have long been a supporter of tax reform. I believe that our current system has been causing serious damage to our economy. Our confusing, contradictory, and constraining tax system increasingly stifles initiative and misdirects our resources. I voted, along with 94 of my colleagues, in support of the Senate package which I believe would have gone a long way toward correcting many of the ills in our current system. Now the question we have before us is, Does this compromise with the House accomplish the same goals and would it be better than our current system? After closely reviewing the package I must conclude that to me it does not meet that test.

There are many aspects of the bill which I wholeheartedly support. The sharp reduction in tax rates for both individuals and businesses, collapsing the brackets from 14 to 2, closing many abuses and loopholes, and the tough minimum tax which would ensure that all wealthy individuals and profitable corporations pay their fair share of taxes are all major steps in the direction of tax reform.

However, I believe that the negative aspects of this bill outweigh the positive. I am especially concerned about the effects this bill will have on productivity, capital investment, and economic growth. The repeal of the investment tax credit, the elimination of the special capital gains tax treatment and the changes in the depreciation schedules will likely stunt the availability of capital for productive investments and business expansion. At a time when the United States is experiencing record trade deficits, such shocks to the business community will only further impair the ability of our industries to compete with foreign imports.

In the zeal of tax reform I believe that we may have lost sight of what makes a strong and growing economy. I—like any other Member of Congress—would like nothing better than to lower taxes for 80 percent of Americans. But we must look at the full costs of taking such sweeping actions. Transferring $121 billion in tax liabilities from individuals to businesses is a drastic move that could easily hit some already ailing and reeling industries, such as energy, agriculture, and banking, with enough of a jolt to knock them out of the box and plunge the rest of the economy into further decline or a recession. We cannot trample on businesses without paying a dear price.

There are a number of other aspects about the bill that I find especially troublesome, such as the repeal of income averaging which is so necessary for our distressed farmers and ranchers, and the retroactivity of the investment tax credit, some of the real estate provisions, and pension rule changes for Federal employees. I do not believe that it is fair to newly burden individuals for proper decisions that were made by them in the past, based on the laws that were in effect when the decisions were carefully made.

Another issue of particular concern to Wyoming is the elimination of the deductibility of State and local sales taxes. Wyoming relies extensively on the sales tax, and we do not even have a State income tax. Along with a very few other States we are rather fortunate to be able to avoid that type of tax, and I do not believe that Wyoming should be somehow penalized for its citizens' choice of revenue-raising devices.

Another issue which needs to be addressed is that of tax certainty. One of my primary reasons for support of major tax reform legislation is that Congress has fallen into a nasty and common habit of changing the rules every year or so, making planning for the future almost impossible. Tax reform was supposed to end that uncertainty once and for all. Yet, I have heard my colleagues say that they do not like many of the provisions of this bill but that they are willing to vote for this package, knowing that they will attempt to change the especially clumsy or troublesome provisions next year. Likewise, the chairman of the House Ways and Means Committee is already advocating increases in the tax rates in order to reduce the deficit. We cannot have it both ways. If we are going to make significant changes in the tax bill we should do so in such a way that individuals and businesses are allowed to plan around those changes for at least several years into the future.

I am not now prepared to take the leap of faith that is being asked of us in a vote for this legislation without fully knowing more of what the consequences will really be of such a sweeping reform of our taxation system. Although I remain very supportive of the theme of the bill—eliminating many tax credits, exclusions, deductions, and other tax loopholes in exchange for these sharply reduced and simplified rates—in good conscience I am not able to lend final support to legislation which I believe will have very negative consequences on the economy of my State of Wyoming and on the economy of this Nation.

I am not one who believes that we must pass this legislation now simply because Congress has spent so much time on the issue. I, like my good friend and colleague from Wyoming, MALCOLM WALLOP, am reluctant to support legislation which was significantly altered after the conferees signed the final agreement. Tax reform is a very serious issue that will have a very significant impact on our economy, and legislation enacting such changes should be done in a very careful and cautious manner. I applaud my colleagues—and especially BOB PACKWOOD, a superb and fair legislator who has shouldered the burdens of Atlas in moving this matter through the legislative processes—for all the time and effort that he and Senator LONG and Senator BRADLEY and others have devoted to this mammoth task—but I cannot support the final product.

Mr. HATCH. Mr. President, this conference report represents a turning point in the tax policy of the United States. No longer will it encourage investment in capital goods; no longer will it encourage investment in the future education of our children; no longer will it encourage investment in long-term projects; no longer will it encourage investment for an adequate retirement; and no longer will it encourage support for the neediest of society. This bill does not increase fairness, it does not simplify our current tax system, it does not even lower the overall burden of taxation on Americans. It does purport to lower the taxes on individuals by $120 billion and to raise taxes on businesses by the same amount. But who pays for the increased taxes on businesses? The businesses will simply pass these increased costs on to the individual consumer. Corporations do not pay taxes—people do.

I agree with the initial premise of true tax reform: To simplify the tax system; to treat individual taxpayers more fairly and equitably; to allow the free market to be the basis for investment rather than tax considerations; and to get the Government out of the business of making decisions for businesses and individuals. Unfortunately, this bill does not achieve any of its stated goals.

Indeed, some individuals may receive tax cuts, but they will also have to pay more for their housing and other goods and services.

Further, these added costs of doing business may not be equitably apportioned to consumers. In fact, it is likely that the higher costs will fall disproportionately on the poor. These

are the very individuals that are supposed to benefit the most from this bill.

The tax bill already has been very disruptive to the economy. Businesses, both large and small, have not been allowed to make long-term investment decisions. Indeed, many have been penalized for decisions based on the current Tax Code. No longer will businesses wish to make long-term investment decisions, because they will fear that the law could be changed unfavorably. This uncertainty in the future will encourage shortsighted decisions that will lead to a lessening of economic activity and an inefficient allocation of resources.

Some politicians have made irresponsible statements regarding further changes in the tax law next year. Many have even called for raising taxes—while we are obstensibly attempting to provide relief for taxpayers. In fact, businesses are already anticipating the reinstatement of accelerated depreciation and the investment tax credit [ITC] and are delaying purchases of equipment. This change may become a self-fulfilling prophecy.

Individuals also will suffer because of the uncertainty created by this tax bill. No longer will they be encouraged to save and invest for the future because they will fear that the rules will be changed. No longer will individuals be encouraged to give significant amounts to private charitable organizations. No longer will individuals be able to plan for a secure retirement. The U.S. saving rate is already one of the lowest in the world. This can only lead to further burdens on Social Security and other Government programs.

The bill actually results in a revenue loss over the long term; that is, beyond 5 years. This happens because many so-called sources of increased revenue rely on timing changes. These changes in the tax law, depreciation for example, simply shift future deductions outside the 5-year scope of the bill. Taxpayers will still be depreciating the same aggregate amount, but the deductions are simply spread over a longer period of time. So while tax revenues are supposedly neither increased nor decreased over the next 5-years, revenue in subsequent years, so-called outyears will actually be lower.

The bill will have an impact on the budget deficit in 1987 and for years to come. We have been told that this bill is revenue neutral; but if I had a nickel for every revenue estimate made for this tax bill, I wouldn't just represent Utah; I'd own it. The bill poses a greater threat to our efforts to control the deficit than does the uncontrolled spending of many in Congress.

While I believe that this bill is not good for Americans overall, it does contain certain transition rules that help to mitigate some of the most negative consequences of this bill. Chairman PACKWOOD deserves a great deal of credit in balancing the multitude of requests for transition rules which he received. He has succeeded, where others before him have failed, in devising a sweeping modification of our Tax Code.

Kennecott Copper will be permitted to use current law depreciation and the investment tax credit [ITC] for its Bingham mine modernization project. Western Airlines will be permitted to use current law depreciation and ITC for the purchase of 21 aircraft. Kaiser Power will be permitted to use current law depreciation and ITC for a cogeneration plant to be constructed in Sunnyside, UT. The Trolley Square shopping and entertainment facility also will be permitted to use current law depreciation and ITC.

The Denver and Rio Grande Railroad will be permitted to use accelerated depreciation and ITC for railroad grading and tunnel boring equipment used in the reconstruction of the railroad which was damaged by a mudslide in Thistle, UT.

Geneva Steel will be permitted to carryback 50 percent of its unused ITC for 15 years against taxes previously paid.

The Utah Municipal Finance Cooperative for 103 cities will be permitted to issue tax-exempt bonds which are exempt from having to remit earnings from the investment of the bond proceeds to the Federal Government for 3 years.

While these transition rules are good for Utah, they would not be necessary if it was not for this bill. In fact, I am disappointed that many other transition rules were not included in this bill. This fact alone illustrates the inherent unfairness of this bill. There are still too many unanswered questions. Mr. President, I intended to vote no. We must have sound economic reasons to vote for a bill with such a broad scope. It is said that justice is blind, but are Congressmen and Senators blind too. We in Congress will be taking a big risk with our economy by passing this bill. I will be closely monitoring the bill's effect on the economy, and I intend to take appropriate action to mitigate any negative consequences.

Mr. HEINZ. Mr. President, I want to address one specific area of H.R. 3838. It is an area of generally good news in a bill where I otherwise have singled out serveral provisions about which I have serious reservations.

The good news is the dramatic pension reform package. The pension reform provisions in this bill will make the average American worker a big winner in retirement security.

Two years ago we celebrated the 10th anniversary of ERISA—the Employee Retirement Income Security Act. Younger workers today, however, still face a tough challenge: they are going to have to build retirement resources to stretch further than any generation before theirs.

Unfortunately, for most people today, collecting a pension benefit is still a gamble. Half of the work force isn't even in a pension plan. Many of those who are in pension plans never earn benefits or lose their benefits after they are earned. As a matter of national policy, we need to improve pension security for the average worker by bringing more people under pension plans and fitting pensions more effectively to the reality of today's mobile work force.

The pension provisions in this bill were carefully considered and badly needed. Senator CHAFEE and I culled from 2 years of work with experts from business, labor, and government the ideas that were embodied in the Retirement Income Policy Act [RIPA] that we introduced last fall. The reforms in our bill were the subject of hearings in both the House and the Senate, and ultimately comprised the body of the pension reform provisions included in this tax bill.

Mr. President, the result is, I think, a tax bill with the right mix of pension reforms to really boost retirement income in the future. For families whose breadwinners are today in their thirties and fourties, the tax bill would raise the average pension income by 22 percent and reduce the number reaching retirement without pension income by 37 percent.

In the decade 2011-20, there will be some 22 million families who will be receiving higher pension incomes as a result of this bill. What that means in terms of the average family who would get a pension 25 years from now is—in 1986 dollars—roughly an increase of $1,800 a year every year in retirement.

These retirement income gains would come about because the tax bill would make employer plans a safer bet for the average worker, bringing more people under pensions, making it easier for them to earn benefits, and making it more certain that they receive the benefits they earn.

First, it would bring more people under plans so they can begin earning benefits. Under current law an employer can set up a pension plan for some employees and not allow other employees to participate. In fact, an employer can have a plan that excludes nearly half of his employees—or even more if the IRS can be assured that the plan isn't solely for the most highly paid employees.

The tax bill would force employers to cover more of their lower paid workers. The bill would reduce the proportion of lower paid employees

who can be excluded from the pension plan to 30 percent. Alternatively, it would make it difficult for an employer to get IRS approval if plans were not provided for all or nearly all employees.

The second major change is to help more people who are in pension plans earn benefits. Today, most people have to stay with the same employer for 10 years before they have earned the right to receive a benefit, or are "vested" in their pension plan. If they are in the pension plan, and they leave after 9 years and 6 months, they receive nothing.

The tax bill shortens the vesting period from 10 years to 5. In the first year alone, the 5-year drop would entitle nearly 2 million additional workers to benefits. Thereafter, millions of mobile workers who would have earned nothing before will have an opportunity to earn retirement benefits.

The third major pension reform in the tax bill is to limit the ability of an employer to deprive lower paid workers of their pension benefits because their Social Security benefits are considered adequate. Employers today can keep low-paid workers out of a pension plan or eliminate their pension benefits when they retire by "integrating" the benefit with Social Security.

The Senate tax bill would end this kind of abuse. Under the Senate bill, employers who combine the Social Security and pension benefits would still have to give an employee at least half of the pension benefit they would have had without considering Social Security.

Finally, the Senate bill would encourage people to keep pension money in retirement plans and thus ensure its availability for their retirement. Many pension and savings plans today let employees cash out their pension money if they leave the company before retirement. Recent studies have shown that only 5 percent of the pension money cashed out for employees before retirement is rolled into another retirement savings account. As a result, too much retirement savings is being cashed out and spent for cars and vacations before retirement ever occurs.

The pension provisions in this tax bill clearly would make saving more attractive than spending. Tax benefits would continue only if the employee rolled the money into an IRA or another retirement plan. Retirees, on the other hand, could continue to take their benefits as retirement income without penalty.

Mr. President, quite rightly this bill focuses on getting people retirement benefits from their employer-sponored plans. Employer pensions, after all, will be the main source of retirement income for most of today's workers. Already, more than half of the work force is covered by a pension at their place of work, with more than $1 trillion already invested to pay their future benefits. While these plans benefit the owners and highly paid executives, they also benefit the lower paid, rank-and-file workers who otherwise might have great difficulty saving for retirement.

While the pension reform provisions of this tax bill are generally sound retirement policy, the final version, as it has been reported from the conference committee, is not everything I would have wanted. I am particularly concerned that as this bill has moved through the legislative process, provisions have been added that may discourage retirement savings, reduce some of the incentives for employers to sponsor plans, and possibly reduce pension funding.

When we introduced the Retirement Income Policy Act last year, our intention was to encourage individual savings for retirement to supplement employer-provided pensions benefits. The bill before us would unfortunately make individual savings much less attractive than they are now. Individual retirement accounts, which have increased the public's awareness of the need to save and have stimulated individual savings, will be limited by this bill. I am pleased that the full IRA deduction will still be available for all low- and moderate-income workers, and for all workers who do not have pensions. I am concerned, however, that middle-income couples who have only a small employer pension will not be encouraged to save additional amounts for their retirement.

In addition, the final version of the bill would make the thrift and savings plans and 401(k) plans that employers have sponsored much less attractive. The limits, restrictions, and tax penalties that have been placed on savings in employer plans are greater in this bill than in the earlier Senate version. While I have supported the idea that we should emphasize employer-financing of retirement benefits, the excessive restrictions on individual savings plans incorporated in the final version go beyond simply restoring that emphasis—they may well discourage responsible savings among younger workers and rank-and-file employees. I hope this does not prove to be the case.

There is also a danger that the combination of pension reforms and lower individual and corporate tax rates may discourage some employers from adopting pension plans for their employees. A major goal in our Retirement Income Policy Act was to simplify some of the complex pension rules that made administering a pension plan burdensome. I had particularly hoped that we could simplify the coverage tests, integration rules, and section 415 combined limits on benefits and contributions. Unfortunately, with the exception of the integration rules, I think the final bill adds complexity in these areas. Even the integration rules did not come out as simply as I had hoped.

I am particularly concerned about the combined effects that the pension reforms and lower tax rates may have on pension coverage among small employers. Pension plans are already too scarce among small employers, and this bill may well make a pension impractical for a small employer who doesn't already have one. Next year, the Congress must begin to look for ways to make pensions more attractive for small companies.

Finally, we had hoped, when we introduced the Retirement Income Policy Act, to encourage more stable funding of pension plans by simplifying the section 415 limits and indexing them for wage increases. While the 415-limit changes represent some progress I regret that they create some incentives to underfund pension plans. This is particularly true of provisions for an actuarial reduction in the limits for early retirement, which will make it impossible for employers to fund benefits they now provide. In light of the concerns that are now surfacing about underfunded pension plans, this change is bad policy.

Even with these limitations in the final bill, I am generally pleased with the substantial and necessary pension reforms we have accomplished in this tax bill. These reforms will truly help the average workers. They stand as one of the strongest threads in the fabric of this bill.

Mr. SPECTER. Mr. President, after careful thought and extensive consultation with my constituents, I have decided to vote in favor of the conference report on the tax reform bill.

During my Senate service, I have seldom seen a bill on which the public's reaction was as ambiguous as it is on this one. On the one hand, there is genuine enthusiasm in my State, in the country, and the U.S. Congress for the goal of simplification, and certainly, for lower rates.

The provisions of this bill which remove millions of low-income people from the tax rolls and which reduce rates of taxation for low- and middle-income people are major accomplishments. All of us in the 99th Congress will be able to look back with pride on having achieved passage of such provisions, which have eluded us so often in the past. And more generally, this bill should have a beneficial effect on the economy because it will reduce the incentive to base investment decisions on tax considerations, and increase incentives to invest in projects that will be genuinely profitable and productive.

On the other hand, a number of provisions in this bill give me serious con-

cern. It is my sense that it will be necessary for us to revisit some of these issues next year, and I personally will support efforts to do so. Among the important questions that I believe will need to be revisited are:

Whether the bill establishes rates of taxation that are sufficiently progressive. I question the fairness of taxing those with incomes of $29,000 per year at the same rate as those with incomes in the millions of dollars. I supported an amendment to add a higher bracket for the very wealthy. I remain very concerned about this aspect of the legislation.

The nondeductibility of contributions to individual retirement accounts. Although the lower tax rates in this bill should reduce the negative effects of eliminating this deduction, I believe the deductibility of the IRA's should have been retained. As we develop a better sense of how the tax bill works in practice, I believe we will need to consider an amendment on this issue.

The provision of the bill providing for taxation of unemployment compensation benefits. In portions of my State that have not fully benefited from the economic recovery, many unemployed people simply cannot understand how Congress could make life even more difficult by imposing a tax on benefits for people facing an already difficult situation. For steelworkers and coal miners who have been out of work for 1 year, 2 years, or even longer, this is a blow that simply is not acceptable. We should rethink this provision.

The change in rules for taxation of Federal employee pensions. Previously, the first 3 years of pension benefits for retired government employees were treated as a payback of the employee's contribution, and thus were tax free. Under this bill, the employee contribution will be amortized over the actuarial life of the pension, so that taxes will have to be paid beginning in the first year of the pension. To impose this change on employees who have been planning their retirement on the assumption that the first 3 years would be tax free is simply unfair. We must reconsider this issue, too.

The elimination of the deduction for union dues. In some unions, these dues are quite expensive. Many union members have contacted me, expressing the feeling that they are being treated unfairly because certain other business expenses will remain deductible for management.

The elimination of the investment tax credit. This tax provision has been of immense benefit to heavy industry, which has long been the cornerstone of Pennsylvania's economy but which is now suffering terribly under a floodtide of imports that are subsidized and dumped by foreign governments. The elimination of the ITC, like taxation of unemployment benefits, is viewed by many as an attempt to kick someone who is already down.

The further restriction imposed by this bill on industrial development bonds, which are of tremendous importance to local municipalities in Pennsylvania and around the country in promoting and directing economic development. Again, as a representative of a State still recovering from major economic problems, I am deeply concerned about any further loss of this important job-creation tool.

The elimination of the elderly exemption and the increase in the minimum threshold for deducting medical expenses from 5 percent of income to 7.5 percent. Many senior citizens on tight budgets are deeply concerned about these changes.

The need for these changes must not cause us to lose sight, however, of the many improvements that have been made in this bill since tax reform first began to be discussed in the 99th Congress. Among the improvements that have been made are:

There will be no taxation of fringe benefits as originally proposed by the administration. Many Pennsylvanians and others bitterly opposed this idea;

There will be continued deductibility of State and local taxes, which will help State and local governments maintain current levels of service;

The depletion allowance for coal, a hard hit but vital industry in the Commonwealth of Pennsylvania, will be maintained;

Proposals to tax the inside buildup of life insurance have been rejected, thus protecting this valuable investment for millions of Americans;

A $500 million transition rule for the investment tax credit has been included for the steel industry, which simply cannot afford any further adverse developments under the law or otherwise for the immediate future.

Mr. President, I could discuss many more aspects of this extremely long and complicated bill, but I can sum up my thinking by saying that the pluses outweight the minuses, especially when this bill is compared with current law. Overall, this conference report will improve our tax system, although it will still leave us far from perfection. In the 100th Congress, we must strive to inch still closer toward the best tax system possible, especially as regards the issues I have mentioned earlier. But to throw away this opportunity for improvement would be a mistake. That is why I am voting "aye."

Mr. MATSUNAGA. Mr. President, as the foremost advocate of renewable energy in the U.S. Congress I am pleased to report that the Tax Reform Act of 1986 reaffirms our Nation's commitment to the development of renewable energy. This should provide many of my colleagues, as it does me, with additional reason for supporting the pending conference report.

Mr. President, it is my firm conviction that unless we establish ourselves as an energy self-sufficient Nation, we shall never be able, fully and effectively, to control our own economic destiny. This imperative, in turn, requires us to exploit our renewable energy resources and to broaden the mix of these sources that we employ—in our industries, in our commerce and transportation, and in our households.

The conference report on the Tax Reform Act of 1986 (H.R. 3838) contains a number of provisions of significant benefit to the development of renewable energy. Under this legislation, the solar business energy tax credit is extended for 3 years through 1988; the geothermal business energy tax credit is extended for 3 years through 1988; the ocean thermal energy credit is extended for 3 years through 1988; and the biomass energy credit is extended for 2 years through 1987. As the author of this amendment which I offered during the Senate Finance Committee's deliberations earlier this year, I am pleased that the House conferees, as well as the full House membership, have now joined in this vital commitment.

The conference report contains another provision which I proposed, and which will be of particular benefit to the renewable energy industry. I refer specifically to the retention of the 5-year depreciation treatment for solar, wind, geothermal, ocean thermal, and biomass property.

Finally, Mr. President, the conference agreement provides for a transition period for supply or service contracts from the repeal of the investment tax credit. Where a company already is legally obligated to build generating facilities in order to meet a qualified power sales contract, the facilities are grandfathered for the tax credit. The supply or service contracts rule will provide for the orderly transition of business operations under the new law.

Mr. President, in the face of international trade competition in technology, the tax credits and accelerated depreciation treatment provide necessary backing for the domestic renewable industry. In the business of renewable energy, technological discoveries and developments require rapid changes in the industry. This is true for all domestic manufacturers, but especially for our high technology sectors. To remain at the leading edge, our domestic industries must adopt the best technology and the best commercial applications. This competitive strategy requires not only business flexibility, but it also requires continued research and development. Without this basic work, we will never be

able to rejuvenate our industrial base. In this regard, the Federal Government has a responsibility to help lay the foundation for dynamic industrial growth at home.

In the renewable energy area, we have been temporarily lulled by low oil prices. This situation is hardly a permanent one. Indeed, the market is utterly unpredictable. Conditions will change and when they do, it is my fervent hope that the domestic economic dislocations which occurred in the past can be avoided because this Congress had the foresight to anticipate them. By supporting continued technological innovations in renewable energy, we will not only enjoy lower energy costs, we will enjoy the economic resiliency with which to meet any future oil crisis.

Mr. NUNN. Mr. President, I would like to extend my appreciation to the Chairman of the Finance Committee, Senator PACKWOOD, for the outstanding job he did in bringing this bill to fruition. I would also like to thank my friend, the distinguished ranking member of the Finance Committee, Senator LONG, for his leadership on this issue and for his extended service to the Senate and our Nation in the formulation of our country's tax policy. I would also commend Senator BRADLEY for his early and effective initiatives in the area of tax reform. Finally, the members of the staff should be recognized for the incredible amount of effort they expended under difficult conditions.

There are many good aspects of this bill: It reduces the effect of tax loopholes on economic decisions, removes 6 million working poor from the tax rolls and requires that a significant alternative minimum tax be paid. I support those provisions of the bill. The negative aspects of this bill have been fully set forth in debate. I am concerned about the unfairness of the retroactive sections of the bill; the lack of understandable and objective standards for the transition rules; whether lower tax rates are really going to result in lower tax bills for the middle class; the negative impact on charitable organizations including our private colleges and universities; the inequitable treatment of retirees who contributed to their retirement program.

If the question were simply this tax bill versus the present Tax Code and we could exclude all questions of our fragile economy—our eroding competitive position in the world—our budget deficit and our trade deficit—the choice would be clearer. I do not believe, however, we can avoid these essential questions in examining this bill. My concern is that, while expending great effort to bring about tax reform, this Congress and the President have not addressed these underlying fundamental questions. As we approach a vote on this matter, my overriding fear is that we have not focused on or discussed, much less analyzed, the macroeconomic effects of this bill. There has been no attempt to determine what this bill does to our competitive position in the world market. I fear the result will be negative because of disincentives for long-term investment. This is a consumption-oriented tax bill in a period when we should be encouraging savings and investment.

There has been little analysis on how this bill, if it becomes law, will compare to the tax systems of the countries with which we trade and invest. This country has a serious economic problem related to our budget and trade deficits. Our budget deficit affects our trade deficit which impacts all Americans either directly or indirectly. This bill does nothing to improve our budget deficit problem. In fact, it was designed to be revenue neutral, but I fear that it will contribute to larger deficits when all is said and done. The revenues associated with closed loopholes, eliminated tax shelters and the alternative minimum tax could have been applied against the deficit but were not. The tax bill has taken our eyes off the deficit while the deficit is eroding our ability to compete in the world.

How does the elimination of investment tax credit and capital gains affect capital formation and job creation in this country? Does that elimination give a long/term competitive advantage to companies from Japan—Europe—the Pacific basin? I fear the answer is yes. There has been little analysis or debate on these questions. I also must confess that, though I believe the lower rates of the 1981 tax bill have been helpful, I believe that this bill goes too far in this respect. I do not have an adequate explanation for single individuals with taxable income over $17,600 per year or married individuals who file jointly with taxable income over $29,300 per year who ask "Why is my rate of taxation the same as Lee Iacocca, the Gettys, and the Mellons?"

In the final analysis, Mr. President, this bill is a gigantic gamble. We are rolling dice for huge stakes. We are gambling with the American economy and our ability to compete in the world. We are playing a big poker game with no limit on the size of the bet. I have searched my mind and find that I am too cautious to support this big of a gamble. I hope I am being too conservative. I hope that the gamble pays off and America wins.

Mr. GORE. Mr. President, as the long and difficult process of tax reform, begun almost 2 years ago, comes to a close, I want to express my high esteem for the hard work by members of the Finance Committee. A revision of this magnitude is not an easy task, and it is simply impossible to accomplish in a manner that pleases everyone.

I am certainly not pleased with every provision of the conference report. However, I do believe that it will result in a fairer system in which neither very wealthy individuals nor highly profitable corporations can totally escape paying taxes. By closing many unjustified loopholes, the bill produces a little more fairness in the Tax Code and removes some distortions that have channeled investment into shelters. Moreover, it gives needed relief to the poorest of the working poor. Therefore, I support the bill.

Nevertheless, there are many specific provisions in the measure about which I have serious concerns or which I, quite frankly, oppose. Overall, I am disappointed that this bill, in many ways, does not result in simplification. That is an important goal in tax reform, and, except to the extent that this bill closes many loopholes, the goal of simplification is not served by this reform.

While the bill is fairer on the whole for the average taxpayer, there are specific items which will have unforeseen and, quite likely, unfortunate results. During debate on the Senate bill, I supported amendments to change many of these provisions. Some of the amendments did not pass and others did not survive the conference. I was not pleased at this result, and I have carefully reconsidered my support for this measure as a result.

Among the provisions which I find most troublesome are:

Elimination of deductibility of state sales taxes;

Retroactive transition for the ITC, certain real estate investments, and retiring Government employees;

Elimination of income averaging for farmers;

Elimination of deductability of interest on student loans and other provisions that will restrict the ability of educational and charitable institutions to raise funds;

Stricter limits on IRA deductability.

Finally, the impact of this bill on the economy is a subject of keen debate. However, I firmly believe that, in the long run, the economy will be stronger when decisions are made on the basis of profit and sound business judgment rather than on tax benefits handed out from Washington. The Federal Government has attempted to direct investment into areas that the free market would not otherwise support. The result has been declining corporate income tax collections and misdirected investment in the economy. Although the transition to more market freedom in business decisions may not be easy, in the long run it should result in more efficient allocation of investment in those business

endeavors that produce a greater return.

I would have preferred greater progressivity in this tax bill, and I voted for an amendment during debate on the Senate bill that would have assured it. However, as my colleague, the senior Senator from New Jersey, has pointed out so ably in debate on this bill, elimination of loopholes does, indeed, produce a high degree of progressivity. Under this bill, an estimated 30,000 people with incomes of $250,000 who paid virtually no taxes in 1983 will have to assume their share of the tax burden. And, again, the bill does remove over 6 million of the working poor from the tax roles by increasing the standard deduction, the personal exemption, and the earned income tax credit.

So, while I join a large majority of my colleagues in supporting the conference report, it is not an easy decision. The concerns I have expressed make it a close question, and I fully respect the opinions of my colleagues who have concluded that these reservations outweigh the benefits of this reform effort and, therefore, oppose the bill. I do, however, support it and will vote "aye."

FOREIGN CURRENCY TRANSACTIONS

Mr. DOLE. Mr. President, I would like to address the issue of our expectations of the IRS's treatment of various issues resolved for future years by certain provisions of this bill. We are all aware that implementation of the Tax Reform Act of 1986 will add a considerable burden to the already strained resources of the Internal Revenue Service. We all expect that this increased burden will be short-term because the major reforms contained in this bill will, in the long run, encourage compliance with the tax laws and, therefore, reduce the tax administrator's burden.

Many of the legislative changes in the bill are the result of the IRS challenging, without success, positions taken by taxpayers in situations where the law was unclear. Where the bill clarifies the appropriate treatment of these issues for the future, I urge the IRS to consider settling pending cases in accord with the provisions of the bill. One issue where such consideration would be appropriate is the treatment of foreign currency exchange gains and losses.

Mr. CRANSTON. Mr. President, I support the conference report on the tax reform bill.

This bill is a progressive reform. It could be better. But it is more progressive than the original Senate bill. It is more progressive than the original House bill. And it is more progressive than current law.

An article in "Tax Notes" for September 22 reviews the progressivity effects of the 1986 tax reform bill. The article supports the view that on any index of progressivity the conference report is superior to current law, to the Senate bill, and to the House bill.

The House-Senate conferees have produced a bill that's better than either the House or Senate bill—a worthy accomplishment.

The 1986 Tax Reform Act is progressive because it broadens the tax base by closing loopholes and limiting deductions which advantage high income taxpayers. This increases the tax burden on these taxpayers and makes it possible to reduce the tax burden on lower income taxpayers. And it makes it possible to lower the rates for all individuals and corporations.

It's true, however, that the very few extremely wealthy families—those described in the report of the Joint Economic Committee as the 840,000 families who own 53 percent of the wealth of the country—will still be able to avoid paying their fair share of taxes if their income comes entirely or largely from the tax-exempt status of local government bonds. The extremely wealthy, according to the Joint Economic Committee report, own over 70 percent of all tax exempt bonds held by individuals. Tax exempt bonds were kept alive despite the reform bill because they make it possible for local communities to finance needed services and facilities.

Since early January 1985, I have held over 50 community meetings in California in which I listened to and participated in roundtable discussions with Californians of all walks of life on tax reform and other issues. I learned that Californians, like Americans everywhere, are dismayed by our loophole ridden tax system. I also learned that Californians, like Americans everywhere, were very interested in tax reform but were reluctant to let go of the system they knew in exchange for a new, unknown tax system.

That's a reasonable attitude.

Change, however, takes place in the future. And as we all know—or should know—it is very difficult to predict the future accurately. No one can promise that this tax reform bill will be successful in terms of its economic consequences. I do have hope, however, for one particular reason. Investors and business leaders should make their future decisions based less on the tax conveniences and more on the economic circumstances of a given opportunity, and that should bode well in the long run for our economy.

I will not enumerate my regrets for some of the negative aspects of the bill. I did play a part in some of the improvements that have been achieved: for example regarding retroactive transition, low-cost housing, and IRA's, and fortunately deductibility of State income taxes has been preserved.

Before I opened each community forum on tax reform I posed this question to the participants:

Do the benefits our economy and our society derive from the current tax system outweigh the fact that it places an unfair tax burden on the majority of Americans?

That is the question we will answer finally when we vote to approve the conference report on the Tax Reform Act of 1986.

Mr. BIDEN. Mr. President, I intend to support tax reform legislation as presented by the conference. This final bill follows the form of the Senate-passed version, which I also supported. Some changes have been made with which I do not agree, but on balance it is a good bill.

I have supported tax reform since before I came to the Senate. I cosponsored the original Fair Tax Act authored by Senator BRADLEY. The present bill is based in large part on this bill. Because the Senate bill was framed on the Bradley model, I supported a no-amendment strategy during consideration of tax reform in the Senate designed to preserve that model. The conference has retained that structure. Therefore, I belive that tax reform will prove to have been the single most positive economic decision made by Congress since I became a Senator.

The long-term impact of this legislation will be beneficial. It will provide an elemental fairness in the sharing of the tax burden that is missing from the present tax law. And it will result in a more effective use of our economic resources.

The tax reform proposal before us broadens the tax base and lowers rates. Most Americans will pay a 15 percent rate and find their tax bills reduced. That is possible because other taxpayers, individual and corporate, who have been using a variety of tax shelters and preferences, will be paying a larger, more equitable share.

The bill reduces rates, to 15 percent and 28 percent, to reward work.

It includes a strong minimum tax, for corporations as well as individuals, to ensure that all who should pay, will pay taxes.

It eliminates tax shelters which have allowed so many to avoid paying any tax at all.

It increases the personal exemption as well as the standard deduction, which will result in removing 6 million lower income Americans from the tax rolls. This will also benefit many of our senior citizens.

For many Americans, the Federal income tax is the only and the most direct contract they have with the Federal Government. In recent decades, the complexity of the Tax Code, and its unfairness, have contributed to public cynicism and distrust of Government. If Government is to be effe-

tive, we must restore public confidence in the elemental fairness of how the people's resources are used to finance it.

But this bill will also create a more efficient economy by greatly reducing tax advantage as a consideration in economic decisionmaking. Investors will give more thought to the economic value of their decisions, and less to achieving tax advantage. The Federal Government will have a reduced role in "managing" the economy. While there may be transition problems as tax advantages are withdrawn, the long term effect on the health of the American economy will certainly be favorable.

Although the bill represents a major accomplishment, I do have concerns about some of its aspects. We should closely monitor the implementation and effects of this law and be willing to make changes if necessary, when they are needed. That is one reason I voted against a proposal offered during Senate debate on the bill in June that there be no further changes in tax laws for 5 years.

When this tax reform measure was before the Senate, I expressed my concern about the need for greater progressivity in the rate structure. I supported Senator MITCHELL's amendment which sought to add a third rate and thus increase progressivity.

A study of the conference bill by the Congressional Research Service demonstrates that the effective tax rates will climb as income rises. The reformed Tax Code laid out in this bill will be more progressive than the Senate bill or even than present law. The increase in progressivity comes from the broadening of the tax base and the elimination of tax shelters and preferences. But I would also prefer a more progressive rate structure.

The long term effect of tax reform on the American economy will be positive. Its restoration of market discipline will improve the competitiveness of American business as a whole. The much lower rates and resulting greater after-tax income will be an incentive for savings and investment. Removing the Government from the business of allocating capital though the Tax Code and instead allowing taxpayers to make decisions on investment based on market considerations will lead to a stronger more productive economy.

Right now, the American economy is sluggish. Many economists are forecasting more or the same or worse in the months ahead. This weakness has been caused by the faulty and shortsighted policies of the current administration. In particular, the President's unwillingness to come to grips with budget deficits bears a large share of the blame. The stagnation in economic activity has led some to suggest that this is the wrong time to enact tax reform—that it might make the economic situation worse.

Mr. President, I just don't believe it. If the economy slows even more in the months ahead, it will not be because of tax reform. It will be because we have failed to deal with the underlying causes of recession—budget deficits, poor trade performance, the enormous domestic and world debt—and due to other factors somewhat beyond our immediate control, such as the decline in oil prices and the weakness of the economies of many other countries.

If our economy remains sluggish, Congress is likely to consider some antirecessionary action. Mr. President, I believe it would be most appropriate to link that type of action with further tax reforms, which, while building upon the reform base being laid by this bill, could also raise revenue necessary to pay for any such actions. Further reform measures might include such things as denying deductibility of interest on debt incurred for non-productive mergers and similar activities.

While some mergers make sense, in order to create economies of scale, fear of acquisition has created a corporate managerial mentality that emphasizes short-term profits to ward off take overs, rather than long-term investment to increase productivity and growth. Commitment of billions of dollars to debt service for these mergers instead of the capital investment necessary to improve productivity seems dubious to me in this trade sensitive economy. We know that the surest way to increase our competitiveness in the world economy is to increase our productivity. Certainly encouraging wasteful mergers through the tax system is a mistake and ought to be rectified at the earliest opportunity.

Tax reforms alone, of course, will not guarantee a bright future for the American economy. We have buried ourselves in the past years in a variety of problems, international and domestic. We must reduce debt and deficits. We must improve our trade performance and reestablish our position in world markets. We must work with our economic partners to solve the foreign debt problem.

The economic challenges facing us are enormous. But tax reform is a good place to start. It can restore the marvelous dependability and productability of the free market system to economic decisionmaking. It will assure Americans who work for a living that they will have a fairer share of their earnings left after taxes. It can also assure them that all Americans are bearing an appropriate share of the tax burden.

If we can restore the discipline of the market, if we can restore the faith of Americans in the financing of their Government because the system is fair, we will then have a good basis from which to move on to solving our other economic problems.

That is why I will vote for the tax reform conference report.

Mr. President, in closing, I wish to express my thanks and congratulations to the distinguished Senator from Oregon, Senator PACKWOOD—the chairman of the Finance Committee—and the distinguished ranking member of that committee, the Senator from Louisiana, Senator LONG, without whose leadership this legislation would not be before the Senate today.

Finally, let me reiterate my regard for my good friend, the distinguished Senator from New Jersey, Senator BRADLEY, who has played, in this Senator's opinion, the key role in bringing tax reform to the American people. Six years ago, I would have said a bill like this was impossible. Many times along the way it appeared the effort might fail. But the Senator from New Jersey persisted and, as a result, we now have the opportunity today to vote for truly historic legislation.

Mr. WARNER. Mr. President, it is with a sense of regret that I rise in opposition to H.R. 3838, the tax reform legislation as reported by the conference. The most serious problem confronting our Nation today is the rising Federal deficit occasioned by unrestrained Federal spending. "What does this legislation offer to lessen the burdens of this increasing deficit?"; this is the question each Senator should answer in casting his or her vote.

The economic consequences of this bill are uncertain. Will it stimulate the economy or depress it? Although this bill brings in $11 billion more revenue in fiscal year 1987, it loses $22 billion the next year. This will create another major obstacle—a need to find spending cuts or revenue to offset—Congress must overcome in meeting the Gramm-Rudman-Hollings goals. We must achieve a balanced Federal budget by 1991 as required by the Gramm-Rudman-Hollings legislation, and that task is difficult enough in view of uncertain economic forecasts.

Mr. President the reduction of the Federal deficit ought to be our Nation's top priority and this bill, I believe, could reduce our chances of meeting this goal. It took this country 205 years to run up the first trillion dollars of national debt, but only 6 additional years to acquire the second trillion. Think of it, a $2 trillion debt to be thrust upon our children! In this era of dangerously high national debt is it wise fiscal policy to create a tax system that has a rate of 28 percent for the wealthiest of taxpayers? Is this something our country can afford?

With the conflicting forecasts on the impact this bill will have on the economy, I believe it is far too risky in this

era of economic uncertainty and high Federal and international debt.

Further, the retroactive nature of this bill adds to our economic uncertainties by penalizing certain businesses and individuals who had made good faith decisions based on tax laws previously passed by Congress. While the conference has made good faith efforts to provide relief in the form of transition rules for many worthy projects which fall into this category, providing enough assistance to protect all of these projects would have effectively neutralized many of the major components of this tax reform bill. Let me add that assistance for some projects and industries in my own State was included in this bill, at my request, and I commend the Senator from Oregon and the staffs of the Senate Finance Committee and the Joint Tax Committee for their assistance.

Fairness has been an integral part of the tax reform process over the last 2 years. I must ask my colleagues, however, whether the retroactive change in the tax treatment of contributory public and private sector pension plans in any way represents fair treatment. In my State alone, thousands of newly retiring Federal workers stand to lose the long-promised tax-free return of their own previously taxed mandatory pension contributions. In simple language—this is a promise broken by the very same Government that made the promise to it's own employees.

Members who bear the responsibility of representing Government retirees know the hardship the pension tax change will have. With the enactment of the tax reform package, years of careful retirement planning, planning we have encouraged, will be abrogated. It is regrettably ironic that with this singular opportunity to provide productive and fair taxation for the entire Nation, the very governmental workers who will be implementing the tax program will be among those hardest hit.

Our distinguished chairman of the Finance Committee, Senator PACKWOOD, has made a strong effort, which I appreciate, to lessen the impact of the pension tax change. My colleagues who supported us will recall that we lost 42 to 57 on the Senate floor in our attempt to eliminate from the bill the tax change altogether. Lacking that action, the final Senate provision did provide a reasonable 2-year phase-in beginning in 1988. That was unacceptable to the House conferees, Senator PACKWOOD then attempted a compromise with an effective date of January 1, 1987. That proposal would have been the minimum we would have expected in terms of fair warning and adequate notice. But no, even that was unacceptable, and we are left with the original House effective date, July 1, 1986, and full retroactive application.

I am concerned for other reasons, such as the worsening of our international balance of payment and the future uncertainty expressed by responsible, thoughtful elements of the private sector over the Tax Code, that I think have been amply covered so I will not go into them here.

Lastly, Mr. President, many residents of Virginia will pay higher State taxes. Some Virginia taxpayers will be able to offset their increased State tax liability since they pay less Federal tax under the proposed lower rates. However, other Virginians who experience no decrease in Federal taxes may pay higher State taxes.

Thus, for these reasons I cannot support the conference report.

APPLICATION OF NEW ALLOCATION OF EXPENSE RULES TO POSSESSIONS INCOME

Mr. MOYNIHAN. Mr. President, the conference agreement contains a provision dealing with the allocation of interest and other expenses. Under the conference agreement, this provision, pursuant to regulations, is to apply to provisions dealing with international taxation. I would appreciate the confirmation of the distinguished chairman that the new rule of section 864(e)(1) does not apply for purposes of computations under section 936(h).

Mr. PACKWOOD. Yes, it is my understanding of the conference agreement that the new rule of section 864(e)(1) does not apply for purposes of computations under section 936(h).

Mr. BRADLEY. It is my understanding that new code section 904(d)(5) requires the Secretary to prescribe regulations under the "look-through of new section 904(d)(3) which will provide that dividends, subpart F inclusions, interest, rents, and royalties received by a controlled foreign corporation from another member of the same affiliated group—determined under section 1504 without regard to subsection (b)(3) thereof—shall be treated as income in a separate category if—and only if—such income is attributable directly or indirectly to separate category income of any other member of such group. This was the rule adopted in the Senate bill and the rule in the Ways and Means Committee report accompanying the House version of H.R. 3838. Such a rule would give taxpayers an incentive to reduce foreign taxes on nonseparate category income without penalty and would conform to the clearly expressed intent of both Houses of Congress.

I assume that such regulations are required to be promulgated under this provision and that such regulations must be fully effective from the effective date of new section 904(d). Is my understanding correct?

Mr. PACKWOOD. The Senator's understanding is correct.

TRANSITIONAL RULE ON INTEREST EXPENSE

Mr. WILSON. Mr. President, it is my understanding that the conference agreement adopts the general interest allocation transitional rules of the House bill applying the 3-, 4-, and 5-year transitional rules as set forth in that bill. Further, the agreement adopts a number of 10-year targeted transitional rules. It is my understanding that there is an example on page 380 of the Ways and Means Committee report explaining and illustrating these rules. It is my further understanding that this example is applicable to the final agreement of the conferees. The example illustrating these rules is as follows:

> Thus, for example, under the three-year "phase-in," if a calendar year taxpayer's debt outstanding on November 16, 1985, was $100, and its debt outstanding at all times during 1986 is $75, the bill will not affect interest expenses paid or accured during that second taxable year.

I would like to ask the distinguished chairman of the committee whether my understanding is correct and whether the example I have given is a proper interpretation of the conference report transitional rules.

Mr. PACKWOOD. Yes, your understanding is correct. The example you have given from the Ways and Means Committee report is a correct illustration of the various transitional rules as agreed to by the Conferees.

Mr. BENTSEN. Mr. President, I wish to raise a point of clarification in regard to section 1221 of the bill, which would amend the definition of "foreign personal holding company income" subject to current taxation under subpart F. One provision of the new definition would cover an item entitled "income equivalent to interest." The provision has the effect of treating as foreign personal holding company income "any income from interest, including income from commitment fees—or similar amounts—for loans actually made." It is my understanding that this provision was contained in the Senate bill and not in the House bill, and that the House receded to the Senate amendment. The term "income equivalent to interest" was inserted in the conference comparison prepared for the House-Senate conference merely as a clarification of the term "interest."

It was certainly my understanding that this clarification was intended to be interpreted in the normal way the term is used, to apply to interest such as commitment fees and certain items that have historically been interpreted as the equivalent of interest. This provision was never intended to reach broad categories of income which have consistently been differentiated from interest. In this regard, I refer specifically to income from factoring receivables where both the obligor and the seller of the receivable are unrelated

to the purchaser. Such income has been distinguished from interest not only under generally accepted accounting principles but in a number of court cases and pronouncements of the Internal Revenue Service. In these circumstances I seek clarification that "income equivalent to interest" was not intended to cover unrelated party factoring income.

Mr. DANFORTH. Before the Senator from Oregon responds to this question, I would like to join in the request by the Senator from Texas. In this regard, I want to point out that Congress specifically considered factoring income in the 1984 Tax Act and enacted a statutory scheme to deal with it. The bill would leave that scheme in place subject to certain minor technical corrections. If factoring income was the equivalent of interest these provisions would be, in large measure, redundant.

I suggest that it would be inappropriate and extremely unfair to apply the "interest equivalent" language to override specific provisions that were enacted as recently as 2 years ago. If such is our intention, we should have specifically enacted the necessary statutory language. Accordingly, I believe that factoring income should not be interpreted as within the scope of the term "income equivalent to interest."

Mr. PACKWOOD. The Senators are correct that this was a Senate provision to which the House receded. The Senators are also correct in his understanding that the term "income equivalent to interest" is not to apply to or refer to income from unrelated party factoring. Finally, the Senators are also correct that the term "income equivalent to interest" was intended to have a meaning relating solely to taxpayers who make formal adjustments avoiding the new rules relating to offshore passive investments.

I want to make a further point that the cases are clear and confirm the views of the Senate conferees that under a normal interpretation income from factoring operations is not the equivalent of interest. Interest is compensation for the use of forebearance of money. A factor does not advance funds to an obligor, but rather purchases receivables outright from a third party. The factor's income is viewed by both the business community, and, informally, but the Internal Revenue Service as a commission "for the service of passing on credits, assuming all credit risks, and keeping the accounts.": (See G. Johnson & J., Gentry, Jr., "Finney & Miller's Principles of Accounting" (7th ed. 1974); GCM 39220 (April 24, 1984); PLR 8338043 (June 17, 1983)).

A factor assumes substantial collection risks and is in no way assured that it will receive a specific yield as is usually the case in a lending transaction. Because factoring involves active collection operations, with costs, expenses, and risks, identical to the collection activities of the seller of goods, income therefrom should not be treated as the equivalent of interest. Factoring income was intended by the conferees to be includible under subpart F only if it constitutes related party factoring income under section 864(d), as amended by section 1810(c)(2) of the bill, and not as income equivalent to interest.

I want to assure my colleagues if we had intended to include factoring income as a category of foreign personal holding company income we would have specifically stated it as such.

Mr. BOREN. Mr. President, I would like to engage the distinguished chairman of the Senate Finance Committee, Mr. PACKWOOD in a colloquy concerning an ambiguity contained in the conference report on tax reform.

At conference, the House receded to the Senate on section 1215(c)(2)(C) of H.R. 3838, yet portions of the House language were incorporated in the rule. The House language which is picked up in the conference report refers to "interest expenses paid or accrued with respect to the amount of indebtedness" which could be interpreted as applying the rule to level of interest instead of level of indebtedness of a company. It is my understanding that this rule would apply to the level of indebtedness and not to the level of interest expense. Is that your understanding?

Mr. PACKWOOD. Yes, this is my understanding.

Mr. DURENBERGER. Section 1301 of the Tax Reform Act of 1986 broadly overhauls and amends section 103 of the Internal Revenue Code of 1954. I would like to seek a clarification from the chairman of the Finance Committee concerning the effect of section 1301, including, but not limited to, section 1314(d), as it relates to section 1316(k) of the bill. Section 1316(k) amends section 1104 of the Mortgage Subsidy Bond Tax Act of 1980, as added by the Tax Reform Act of 1980. It is my understanding that the changes in the law made by section 1301 of the Tax Reform Act of 1986, including, but not limited to section 1314(d), does not apply to section 1316(k). Thus, bonds under section 1316(k) will be subject to the same rules as they would have been had they been issued on August 15, 1986.

Mr. PACKWOOD. The Senator from Minnesota is correct.

Mr. DURENBERGER. I thank the distinguished Senator from Oregon for this clarification.

Mr. BENTSEN. Mr. President, with respect to the new generation-skipping transfer tax, the grandfather provision of the prior law was intended to apply to:

A trust which includes a limited power of appointment, so long as the exercise of the power (including the creation of a trust) cannot result in the creation of an interest which postpones, or a new power which can be validly exercised so as to postpone, the vesting of any estate or interest in the trust property for a period ascertainable without regard to the date of the creation of the trust. S. Rep. No. 1236, 94th Cong. 2nd Sess. 621.

The concepts of this legislation history have been embodied in Treasury Regulation, section 26.2601-1(e)(3).

Would the chairman confirm my understanding that the same result would obtain under the new generation-skipping tax provisions.

Mr. PACKWOOD. The understanding of the Senator from Texas is correct. As in the case of the old provision, the new provision will not apply to the exercise of a limited power of appointment under an otherwise grandfathered trust or to trusts to which the trust property is appointed provided that such exercise cannot postpone vesting of any estate or interest in the trust property for a period ascertainable without regard to the date of the creation of the original trust.

Mr. BENTSEN. I thank the chairman.

FREIGHT FORWARDER OPERATING AUTHORITIES

Mrs. KASSEBAUM. Section 243(b) of the bill amends section 266 of the Economic Recovery Tax Act of 1981 to provide for a ratable deduction over a 60-month period with respect to freight forwarding operating authorities. Under section 243(b)(2) of the bill, the 60-month period commences as early as the so-called deregulation month, which is defined in section 243(b)(3) of the bill to mean the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

Is it intended that the "deregulation month" be that month determined by the Secretary of the Treasury or his delegate to be the month in which a Federal law has been enacted deregulating the freight forwarding industry? For example, if a Federal law deregulating the freight forwarding industry is enacted in October 1986 and the Secretary of the Treasury or his delegate determines in January 1987 that such deregulation has occurred, will October 1986 be the "deregulation month"?

Mr. PACKWOOD. Yes.

Mrs. KASSEBAUM. Section 266(c) of the Economic Recovery Tax Act of 1981 provides for an elective adjustment to the basis of motor carrier operating authorities where stock of a corporation holding such authority is acquired. Will that election, under the bill, be available to adjust the basis of freight forwarder operating authori-

ties where stock of a corporation holding, directly or indirectly, such authority is acquired?

Mr. PACKWOOD. Yes.

Mr. BENTSEN. I would appreciate receiving clarification on one point relating to the discussion of landfill depreciation on page 40 of the report. Although the case law is not cited, I believe it is the sense of the report that the Tax Court's decision in *Sexton* v. *Commissioner*, 42 T.C. 1094 (1964) correctly applies current law to allow the recovery of capital costs to the extent such costs are properly allocable to the space to be filled with waste, rather than to the underlying land. In other words, a landfill with 10 million cubic yards of capacity with a depreciable basis of $10 million in excess of salvage value would be entitled to a deduction of $1 per cubic yard when and as filled. Is my understanding correct?

Mr. PACKWOOD. Yes. We believe the Sexton case is the applicable standard under current law, and the committee intends no change in current law.

FLUIDIZED ENERGY FRACKVILLE ASSOCIATES

Mr. HEINZ. I would like to address a question regarding the interpretation of one of the transition rules to the floor manager of this historic piece of legislation, my good friend and distinguished colleague from Oregon, Mr. PACKWOOD.

Can you confirm my understanding that the transition rule contained in section 204(a)(2)(A) is meant to cover facilities such as one in my State that received a certification by the Federal Energy Regulatory Commission on August 5, 1985, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 so long as no substantial change is made to the facility as certified, and, that a design change to capture economies of scale that would increase the output of the facility by 25 percent, without changing the basic configuration of the facility, the fuel source for the facility or the use of the output would not be a substantial change to the facility within the meaning of this transition rule.

Mr. PACKWOOD. I would be pleased to confirm the gentlemen's understanding of section 204(a)(2)(A). The facility he describes would be considered transition property under the rule even if FERC subsequently amended the existing certification for the facility or recertified the facility, since the changes he described would not be substantial modifications.

TRANSITION PROJECTS UNDER THE "GENERAL TRANSITION RULE" PERTAINING TO REAL ESTATE REHABILITATION PROJECTS

Mr. McCONNELL. Will the Senator yield?

Mr. PACKWOOD. I would be delighted to yield to my good friend, the junior Senator from Kentucky.

Mr. McCONNELL. I thank the distinguished Senator from Oregon. Mr. President, on behalf of my distinguished colleage from Kentucky, Senator FORD, and myself, I would like to thank both the majority and minority managers of the tax reform bill for their fine work and leadership throughout this effort. One of my primary concerns about this bill is the lack of clarity with respect to certain general transitional rules pertaining to historic rehabilitation projects, as detailed in section 251 of the bill.

A number of questions have been raised as to those projects this provision was intended to cover. I would ask the chairman if it is his understanding that the provision in question does in fact cover the below named projects.

The Bernheim Officentre Project.

The Old Louisville Trust Building—First National Bank, Kentucky Title Rehabilitation Project.

The Stewarts Building.

Mr. PACKWOOD. Yes; it is this Senator's understanding the projects in question are covered under section 251 of the bill, dealing with the general transitional rule pertaining to historic rehabilitation projects.

Mr. McCONNELL. I thank the chairman. This will eliminate the concerns of those whose projects have been determined by the Finance Committee to clearly meet the requirements for transition rules but did not receive line-item treatment in section 251 of the Tax Reform Act of 1986. Again, I thank the distinguished chairman.

Mr. FORD. I want to thank my colleague, the distinguished chairman of the Finance Committee, Senator PACKWOOD, for clarifying this issue for us. While it appeared that these Kentucky projects would be covered by the general transition rule for the rehabilitation tax credit, I am pleased that we are able to clarify for the record and the legislative history of this bill the intention of the conferees to include them under the general transition rule. These three projects, the Old Louisville Trust Building—First National Bank/Kentucky Title, the Stewarts Rehabilitation Project, and the Bernheim Office Center, are all important projects to Louisville and the Commonwealth as a whole. I thank my colleagues for their assistance in this matter.

Mr. HEINZ. Mr. President, section 212(f)(2) of the Tax Reform Act permits the LTV Corp. to use amounts they will receive under the special steel industry ITC rule to purchase insurance that would pay premiums to keep their life and health insurance policies in force for their retirees in the event payments for these policies were suspended in bankruptcy. The provision, as it is drafted, refers to life and health coverage that the company, but for its involvement in bankruptcy, would be obligated to provide. This qualification of the company's obligation, is in my view, unfortunate.

Specifically, the provision states that the amounts would be used by the corporation:

> • • • To purchase an insurance policy which provides that, in the event the corporation becomes involved in a title 11 or similar case • • • the insurer will provide life and health insurance coverage during the 1-year period beginning on the date such involvement begins to any individual with respect to whom the corporation would (but for such involvement) have been obligated to provide such coverage, the coverage provided by the insurer will be identical to the coverage which the corporation would (but for such involvement) have been obligated to provide, and provides that the payment of insurance premiums will not be required during such 1-year period to keep such policy in force.• • •

Mr. President, in my opinion, this provision does not imply that the company's obligations to provide life and health benefits to its retirees change or do not continue because the company is filing for bankruptcy under chapter 11. I also do not believe that it is intended to modify any provision of the Bankruptcy Code establishing procedures which companies filing for bankruptcy must follow if they intend to terminate employee or retiree benefits that have been collectively bargained.

I would like to ask the chairman of the Finance Committee if he would agree with my interpretation that the language of this section is not intended to affect, in any way, the obligations companies filing for bankruptcy may or may not have under the Bankruptcy Code.

Mr. PACKWOOD. I agree with the Senator from Pennsylvania. In my judgment this provision merely states that LTV must use amounts received through the steel transition rule either in connection with the trade or business of the corporation in the manufacture or production of steel, or to provide life or health insurance benefits for LTV retirees or workers. It does not comment, in any way, on the obligations of the employer in bankruptcy.

Mr. HEINZ. I thank the Senator for his clarification.

Mr. McCONNELL. Will the Senator yield?

Mr. PACKWOOD. I would be delighted to yield to my good friend the junior Senator from Kentucky.

Mr. McCONNELL. On behalf of my distinguished colleague from Kentucky, Senator FORD, and myself, I would like to express our serious concern about a provision in the bill relating to horse depreciation. The problem arises because there is no class life in the case of race horses and an inadequate class life in the case of older breeding horses under existing Treasury Department regulations. This

causes a problem under section 168(g)(2) of the new code.

We would greatly appreciate the assistance of the chairman of the Finance Committee in developing appropriate depreciation guidelines for these horses.

Mr. PACKWOOD. I understand the Senators' concerns. As you know, I believe we were quite mindful of the depreciation rules relating to the horse industry in the bill passed by the Senate. The problem you raise occurs because of a provision adopted by the conference committee which was not in the Senate-passed bill.

Under section 168(i)(1)(B) of the new code, the Treasury Department is authorized to establish a class life for any property which does not now have a class life and to modify the class life of any property where appropriate. In this connection, it would be my understanding that the Treasury Department should give high priority to evaluating the actual experience of race horses and older horses and, based on those findings, expeditiously assign a class life to race horses and to determine whether a separate class life for other older horses should be determined, and if so, to determine what that class life should be.

Mr. McCONNELL. I thank the chairman. Both Senator FORD and I are greatly appreciative of your past efforts with respect to this matter. We believe this will address our concerns. Again, we are very appreciative of your sensitivity to our concern.

Mr. FORD. I thank my distinguished colleague, Chairman PACKWOOD, for clarifying this issue. It is of great concern to a major industry in my State, and I am pleased we have been able to raise this matter. I urge the Treasury Department to take expeditious action on this issue and will be closely watching the Department's action to ensure it reflects this understanding.

CLARIFICATION OF BINDING CONTRACT FOR DEPRECIATION/ITC TRANSACTION RULE

Mr. MOYNIHAN. Mr. President, I would like to engage the chairman in a coloquy.

Mr. PACKWOOD. Certainly.

Mr. MOYNIHAN. The conference report contains a general transition rule exempting projects already under a binding contract from the depreciation and investment tax credit provisions of the bill.

I would like to engage the chairman in a discussion of some of the elements that should be looked at to determine whether or not a series of agreements may consititue a binding contract in the case of projects which are joint public-private endeavors. These public-private partnerships, more than most arrangements, are characterized by a series of arrangements which cumulate; and which make a taxpayer liable for damages if the taxpayer fails to perform under the agreements.

I would like to ask the chairman if he agrees that a key to determining whether there is a binding contract is whether the taxpayer would be liable for damages for failing to live up to his or her agreement?

Mr. PACKWOOD. I do. In fact the conference report states that for a contract to be binding it must be enforceable under State law and must subject the taxpayer to damages if the taxpayer breaches the contract, so long as the amount of damages is not limited to a specified dollar amount.

Mr. MOYNIHAN. I think the Senator from Oregon. I would also like to inquire if the chairman understands that when the conference report speaks of a binding contract, in fact—if State law so provides—the contract could consist of more than one document, even if not executed at the same time, as long as the subject of the overall agreement is the construction of the same property and the agreements subject the taxpayer to significant damages if he or she does not meet his or her obligations under the contract. In other words, if the State law so provides, the contract need not be contained solely within the four corners of a single document.

Mr. PACKWOOD. I do understand that to be the meaning of the conference report.

Mr. MOYNIHAN. Once again, I thank my good friend from Oregon. But I would like to pursue this point a little further and ask him if he would agree that such a series of documents would be agreements between the taxpayer and a municipality a final binding stipulation that settles a lawsuit, involving a community group and a municipality, by obligating the taxpayer to meet certain requirements regarding the construction of the property, including obligations to modify setbacks, reduce the cubic volume of the building, add additional floors, reduce floor heights and use specified facade material and dessign elements. Would the chairman agree?

Mr. PACKWOOD. Yes, I would.

Mr. MOYNIHAN. I thank the Senator form Oregon.

FERC LICENSE RULE

Mr. GLENN. Mr. President, I want to ask the distinguished chairman of the Finance Committee a question about the so-called FERC license rule.

Under section 204(a)(2) of the bill, property would be grandfathered from loss of the investment credit and current depreciation allowances if the property is part of a project that the Federal Energy Regulatory Commission certified before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act.

There are two ways that a project can become a qualifying facility. FERC regulations provide that the owner or operator of a facility may either send the agency notice that the facility meets the requirements for a qualifying facility or request a formal order from FERC certifying the project.

The statement of the managers says that projects certified by formal order have grandfather protection under the FERC rule. A project that a developer has simply put FERC on notice as a qualifying facility is not protected. That's because the latter project has not been certified by FERC.

My question is: What happens if FERC acknowledged in a formal order before March 2, 1986, that a project is a qualifying facility, but the focus of the order was a separate issue?

A constituent of mine, Energy Conversions of America, Inc., [ENCOA], has been working since 1978 to build a facility in Cincinnati that will burn the city's garbage to generate electricity. The electricity will be sold to the local utility. ENCOA signed a contract with the city in 1979 and began negotiating with the utility in 1982. Although a construction contract has still not been signed, ENCOA made a series of trips to the Federal Reserve Regulatory Commission beginning in 1982 for orders to help in the negotiations. For example, in 1982, a hearing officer for the State of Ohio insisted that the State lacked authority, because of Federal preemption, to become involved in determining the utility's avoided cost for purchasing electricity from the Cincinnati facility. ENCOA sought an order from FERC setting the rates that the utility should pay for the electricity. The FERC order states, among other things that—and I am reading—

[W]hen completed, ENCOA will be the operator of a qualifying small power production facility as defined in section 201 of the Public Utility Regulatory Policies Act of 1978 [PURPA] and section 292.204 of the Commission's regulations.

The question is: Does the FERC rule in the bill cover this project?

Mr. PACKWOOD. It was the intent of the conferees as indicated in the conference report that the FERC rule in the bill would cover a facility where a FERC order states that when completed, a company will be the operator of a qualifying small power production facility as defined in section 201 of PURPA.

Mr. GLENN. I thank the distinguished Senator for his clarification.

Mrs. HAWKINS. Mr. President, in the Senate report accompanying the tax bill, the deduction for losses is to be disallowed under title XIV, subtitle A for any activity in which the taxpayer does not materially participate on a regular, continuous and substantial basis. The committee report was unclear as to whether a taxpayer work-

ing full time elsewhere as an employee or in a professional service business is less likely to materially participate in a general partnership or S corporation which is engaged in a business involving orange groves than a taxpayer whose primary business is growing oranges. We respectfully and firmly believe that the material participation criterion can be met by the taxpayer who works elsewhere if he or she participates actively in the management decisions concerning the citrus grove. This would include planting, grove care, maintenance, harvesting, and the negotiation of contracts for the sale of fruit decisions.

The nature of the citrus business is such that experienced grove care professionals are a necessity in the daily operation of the grove even when owning participants are involved in nearly every other operational decision. It is my understanding that a taxpayer is not excluded from the material participation standard solely because of his or her noninvolvement in the day-to-day physical labor connected with citrus grove management.

It is my understanding that Chairman PACKWOOD has also agreed that as long as citrus grove owners are regularly making decisions related to the management and upkeep of their groves and are participating in the sale of their fruit, they be allowed to utilize the deductions under citrus ownership, even though they are employed elsewhere.

Is that correct?

Mr. PACKWOOD. That is correct especially, regarding the day-to-day physical labor, however, the taxpayer must be involved substantially in the management decisions exercising independent judgment and input regarding the operations of the citrus activity.

SECTION 204(A)(2) OF H.R. 3838

Mrs. HAWKINS. I would like to engage the chairman in a colloquy regarding the effective dates for title II. Section 204(a)(2) makes an exception for property that is part of a project that the Federal Energy Regulatory Commission certified before March 2, 1986 as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 [PURPA].

The statement of managers to the bill explains that this exemption will not apply if a FERC certification is substantially amended after March 1, 1986. The managers statement further explains, however, that "minor modifications" after the deadline would not affect the application of this exemption and cites several examples of such minor modifications: "technical changes in the description of a project, extension of a deadline for placing property in operation, changes in equipment or in the configuration of equipment."

I am aware of two cogeneration projects which have undergone some changes since March 1, 1986, and I would like the chairman to comment on whether he understands these to be minor or substantial modifications. The first project was originally certified by FERC on April 24, 1985, as a facility that would burn culm to generate steam and electricity. Culm is a waste byproduct of coal mining. The FERC order indicates that the facility will have a net electricity output of 17.27 megawatts. However, when the project was put out for bids, the construction company that was given the job was chosen because it showed how the project could be built using roughly the same quantity of culm to product more steam and electricity. The facility will now have a net electricity output of 20.2 megawatts. These efficiencies have reduced the cost of the project from what the developer contemplated when the project was first certified by FERC. The developer will have to have the original certificate amended to reflect the higher electricity output.

The second project, which was originally certified by FERC on June 27, 1985, as a "qualifying facility" for purposes of PURPA, has undergone similar changes and is also in need of a clarification as to what are "minor modifications." The project has the same size cogeneration plant. It has the same plant design. It has the same use of process steam—that is, enhanced oil recovery. It is in the same general location—in the same oilfield—although the exact site has been moved approximately 3 miles. It has the same power sale agreement with the same utility, which will interconnect with the same substation. It will use the same type and source of fuel. There are, however, a few differences with the original project. The new project includes ownership of the oil company. The exact plant site has been moved about 3 miles, although it is still in the same oilfield. Although the original developer of the project remains actively involved and a managing partner, there is a possibility that one of the other original partners will be replaced with one or more new partners and somewhat less steam than originally envisioned will be provided to the oilfield.

So I have described two cases wherein some changes have occurred in cogeneration projects since the March 1, 1986 deadline. The first case involved changes to a FERC order reflecting the introduction of efficiencies which resulted in a reduction of the project cost and increase in net electricity output and wherein three separate facilities are combined into a single powerhouse. The second case involves a project that was originally certified for one site and user on a geological oil field and is subsequently relocated within the same oilfield to another user and the FERC certificate is amended to reflect that change. The second case further involves a certification for a project that was originally obtained by a general partnership, but one of the original partners may be replaced by one or more other partners and the FERC certificate is amended to reflect the same. However, the partner who developed the project will remain as a managing partner.

The cases I have described seem to me to fit into the category of minor modifications. My question is whether the chairman agrees.

Mr. PACKWOOD. I agree with the distinguished gentle lady from Florida that the amendments to the FERC orders that she describes fit into the category of minor modifications.

DEPRECIATION AND ITC TRANSITION RULES

Mr. GLENN. I would like to confirm with the distinguished Senator from Oregon the operation of the transition rule for supply or service contracts set forth in section 204(a)(3) of H.R. 3838 as reported out by the conference committee and currently under consideration by the Senate, particularly its application to holders of television franchise rights. H.R. 3838 as passed by the Senate on June 24, 1986 contained section 202(d)(11) which provided, in part, that the amendments made by section 201 would not apply to any property which is readily identifiable with or necessary to carry out a binding obligation with a municipality under an ordinance granting television franchise rights if the ordinance was enacted on July 22, 1985 and a construction contract was signed before April 1, 1986.

While the version of H.R. 3838 presently under consideration by the Senate does not contain the precise language set forth in section 202(d)(11) of the bill as originally passed by the Senate, the conference report accompanying the conference's version of the bill states that with respect to the supply or service contract exception, the conferees wish to clarify that this rule applies to cable television franchise agreements embodied in whole or in part in municipal ordinances or similar enactments before March 2, 1986, January 1, 1986, with respect to the investment tax credit. I would like to confirm that the supply or service contracts transition rule, the statutory language of which was not amended by the conference committee, is intended to cover the holder of any television franchise which would have been covered by the original section 202(d)(11).

Mr. PACKWOOD. That is correct.

Mr. GLENN. Thus, in the case of a cable franchise which was granted a cable franchise on July 22, 1985 and pursuant to which a definitive franchise agreement was negotiated—and subsequently approved and signed after March 1, 1986—and which en-

tered into a construction contract prior to April 1, 1986, its cable related property would fall within the supply or service contracts transition rule?

Mr. PACKWOOD. That is correct. It was the intent of the conferees, as indicated in the conference report, that the definitive franchise agreement which was contemplated by the July 1985, ordinance would be considered embodied in that ordinance and as such would qualify as a supply or service contract entered into prior to March 2, 1986, with respect to the depreciation rules and January 1, 1986, in the case of the investment tax credit rules.

Mr. GLENN. I thank the distinguished Senator for his clarification of this issue.

SUPPLY OR SERVICE CONTRACTS TRANSITION RULE FOR THE INVESTMENT TAX CREDIT

Mr. MATSUNAGA. Mr. President, I seek a clarification from the distinguished manager of the conference report, the Senator from Oregon, as to the investment tax credit supply or service contracts transition rule with regard to transfers of rights to property required by such contracts and transfers of such contracts.

Sections 203 and 204 of the conference bill establish the binding contracts provision and the supply or service contracts provision as general transition rules for purposes of depreciation and the investment tax credit. Identical rules were included in the Senate bill and the House bill.

Under the binding contracts provision, transition property includes "any property which is constructed, reconstructed, or acquired by a taxpayer pursuant to a written contract that was binding" on December 31, 1985 and at all times thereafter for purposes of the investment tax credit. Similarly, under the supply or service contracts provision, transition property includes "any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding" on December 31, 1985 and at all times thereafter.

The House and Senate reports as well as the conference report provide interpretative rules to implement these transition provisions. The binding contracts rule sets forth the basic concept; the other transition measures are corollaries based on the binding contract concept. In this light, some of the interpretative rules under the binding contracts provision are limited to that provision; other interpretative rules under the binding contracts provision provide general rules of interpretation for other corollary transition provisions. With regard to this interrelation, the conference report expressly states that a supply or service contract must satisfy the requirement of a binding contract.

My question concerns the conferees' intention to allow transfers. In particular the conference report at pages I-54 and I-55 states that under the binding contracts rule a contract will not be considered binding at all times after December 31, 1985, if it is substantially modified after that date. The report further provides that transfers of property under contract or transfers of the contracts are nonetheless allowed under the transition provision. The report states:

> If a taxpayer transfers his rights in any such property under construction or such contracts to another taxpayer, the bill does not apply to the property in the hands of the transferee, as long as the property was not placed in service before the transfer by the transferor.

This transfer rule seems to be a general rule of interpretation that also applies to the supply or service contracts provision. It would seem that property or a contract can be transferred under the supply or service contracts provision and still be covered by the transition provision.

Is this Senator's understanding correct that the transfer rule of interpretation also applies to the supply or service contracts transition provision? Is this Senator's understanding correct that the transfer of such supply or service contracts will not be considered a significant modification so that the contracts remain binding at all times notwithstanding such a transfer?

Mr. PACKWOOD. The Senator from Hawaii is correct. If a taxpayer transfers his rights to property under a qualified service contract, the repeal of the investment credit does not apply to the property in the hands of the transferee, as long as the property was not placed in service before the transfer. Similarly, if the taxpayer transfers his rights to such service contracts, the repeal of the investment tax credit still would not apply to property readily identifiable with and necessary to carry out the contract.

Mr. MATSUNAGA. I thank the distinguished manager for this clarification.

Mr. HEINZ. Mr. President, I wish to seek clarification from the chairman of several points relating to a transitional rule to preserve 3,000 to 4,000 new jobs at the Frankford Arsenal.

First, I understand the committee's intent is to not only treat the improvements and repairs and maintenance to the buildings and to the property which were to be incurred over an 8-year period commencing January 1, 1987 as paid or incurred in 1986 but that such expenditures would be expensed in 1986.

Second, I also understand that the committee intends to allow the total amount of improvements to the buildings and the infrastructure of the project which were to be incurred over an 8-year period commencing January 1, 1987 to be eligible for the rehabilitation tax credit in 1986.

Mr. PACKWOOD. The Senator from Pennsylvania is correct in his understanding of the committee's intent. It is hoped that this provision will save the 3,000 to 4,000 new jobs that this project will spawn. It is our intent that language clarifying these points will be included in appropriate legislation in the next Congress.

Mr. CRANSTON. Mr. President, I would like to clarify the application of the investment tax credit transition rules to self-constructed property. Under the bill, the repeal of the investment tax credit does not apply to property that is constructed or reconstructed by the taxpayer if the lesser of $1 million or 5 percent of the cost of the property was incurred or committed by January 1, 1986, and the construction or reconstruction began by that date. For purposes of this rule, a taxpayer who serves as the engineer and general contractor of a project is treated as constructing the property and construction is considered to have begun when physical work of a significant nature starts. Construction of a facility or equipment is not considered as begun if work has started only on minor parts or components. I would like to ask the distinguished chairman of the Committee on Finance to clarify whether in the following circumstances construction of property will be considered to have been commenced so as to qualify the property for the investment tax credit under this transition rule.

Prior to January 1, 1986 an aircraft manufacturer entered into binding contracts with third parties for the construction of aircraft subassemblies to be included by the manufacturer in the construction of the completed aircraft. The cost to the aircraft manufacturer of these subassemblies is approximately $300,000, which together with the costs of other components of the aircraft which the manufacturer had incurred or was required to incur on December 31, 1985, exceeds 5 percent of the cost of the aircraft. These subassemblies were designed for this model of aircraft, were specifically ordered for the aircraft and are essential to its operation, and include wing trailing edges, ailerons and tabs, and rudders and tabs. The subcontractors commenced physical construction of these subcomponents prior to January 1, 1986. Prior to the date the aircraft is placed in service the manufacturer will transfer it to its wholly-owned subsidiary that is included in the same consolidated tax return as the manufacturer. My question of the distinguished chairman of the Committee on Finance is whether in these circumstances an aircraft will qualify for the investment tax credit transition relief.

Mr. PACKWOOD. Yes, such an aircraft qualifies for the investment tax credit under the transitional rule for self-constructed property. Construction of the aircraft would be considered to have begun by the aircraft manufacturer when the subcontractors commenced physical construction of the subassemblies on behalf of the manufacturer pursuant to the binding written contract.

Mr. CRANSTON. I thank the distinguished chairman for this clarification.

PRE-1981 STRADDLES

Mr. DOLE. The conferees considered the provisions of section 108 of the Tax Reform Act of 1984 as part of this legislation. I understand that the conference report does not amend the provisions of the 1984 act as they affect investors, and that the conferees rejected any additional benefit for these investors. I further understand that the statement of managers explaining the conference report did not include the language of the House report that discussed investors and that the conference report is the entire agreement of the conferees.

Mr. PACKWOOD. The understanding of the Senator from Kansas is correct.

Mr. DOLE. I thank the distinguished chairman.

INTEREST DEDUCTIBILITY

Mr. BENTSEN. Mr. President, I would like to clarify the treatment of interest on a loan which is secured by a recorded deed of trust, mortgage, or other security interest in a taxpayer's principle or second residence, in a State such as Texas, where the enforceability of such recorded security instrument will be restricted by State and local laws, such as the Texas homestead law. It is my understanding that under section 1421 of H.R. 3838, such interest is treated as qualified residence interest, provided the interest on the debt is otherwise qualified residence interest. Does the chairman share my understanding?

Mr. PACKWOOD. The understanding of the Senator from Texas is correct.

TREASURY STUDY OF IMPACT ON BANKS OF REPEAL OF LOAN LOSS RESERVE

Mr. MOYNIHAN. Mr. President, I remain concerned that one of the provisions contained in the tax reform bill could have serious implications for the health of our financial institutions.

The issue of the bad debt reserve deduction for commercial banks involves a range of complex factors, including the interplay of the tax and financial accounting treatment of bad debt reserves. Moreover, these factors had to be assessed against a changing landscape, that is, an industry that at this point in its history is experiencing extraordinary pressures.

The bank regulators have expressed concern about the potential impact of the repeal of the bad debt reserve on the safety and soundness of the banking industry. The FDIC, for example, in testimony before the Joint Economic Committee on September 15, 1986, has identified 399 banking organizations, with $2.3 trillion in assets and 80 percent of the loans in the banking industry, that would be affected by repeal of the reserve method. I do not think we can be certain that this change will not have an undesirable effect on bank earnings and bank capital, and on the safety and soundness of banking practices.

I, therefore, think we should seek to assure ourselves about the concerns expressed by the bank regulators. As you know, Mr. Chairman, the conference agreement on page II-316 directs the Secretary of the Treasury to issue a report on the issues involved in determining if a debt is worthless for Federal income tax purposes. We should be certain that the Treasury Department study includes the impact of repeal of the bad debt reserve on the safety and soundness of the U.S. banking industry.

Mr. PACKWOOD. I believe the Senator's comments reflect the concerns of the Finance Committee. The study to be conducted by the Treasury Department should cover the areas described by the Senator.

Mr. THURMOND. I would like to ask the distinguished chairman of the Finance Committee a question about the treatment of certain tax-exempt insurance companies under the bill. Section 1012 of the bill repeals the tax-exempt status of certain organizations providing commercial-type insurance. For this purpose, the provision expressly excludes from the term commercial type insurance "property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii) by a church or convention or association of churches for such church or convention or association of churches. * * *"

Would this provision exclude from the term "commercial-type insurance" property by a mutual insurance company (1) which was in existence and exempt from tax on August 16, 1986, (2) which does not have any taxable subsidiary or any subsidiary doing business with any person other than a church or convention or association of churches, and (3) whose only policyholders are churches, conventions or associations of churches, or religious agencies or institutions owned and controlled by churches regardless of the number of different denominations represented by the policyholders or the fact that no single church, convention or association of churches controls such mutal insurance company?

Mr. PACKWOOD. I am happy to clarify for the distinguished colleague from South Carolina that commercial-type insurance would not, for purposes of the bill, include the insurance activities he has described.

CORPORATE-OWNED LIFE INSURANCE

Mr. DOLE. I would like to engage the distinguished chairman of the Finance Committee in a colloquy about a provision in the tax bill concerning loans taken out on life insurance policies owned by businesses. Section 1003 of H.R. 3838 limits the interest deduction on indebtedness in excess of $50,000 per insured under certain life insurance policies owned by a business taxpayer. The limitation applies only to indebtedness under contracts purchased after June 20, 1986.

Concern has been expressed about whether this provision will apply to a policy purchased on or before June 20, 1986, if the policy is changed in a way that was contemplated by the parties and is customary with respect to such insurance. I would appreciate confirmation of my understanding that none of the following changes to a policy would be treated as the purchase of a new policy: A change in the owner of the policy, the exercise of an option or a right granted under a contract as originally issued—including the substitution of insured but excluding conversion to term insurance—or a change in administrative provisions, loan rates, or any other item that does not affect the major terms of the policy. However, a policy exchanged for a policy issued by a different insurance company would be treated as a new policy.

Mr. PACKWOOD. Your understanding is correct.

Mr. DOLE. I am confident that all the sponsors of this provision did not intend to disallow interest on a taxpayer's normal business indebtedness. I would, therefore, appreciate confirmation that this provision will not disallow interest on indebtedness incurred for a business purpose merely because the taxpayer has purchased a cash-value life insurance policy or has later used the policy as collateral for borrowings other than to carry the policy. For example, would the provision apply to a farmer who borrowed to plant crops and who pledged his life insurance along with his other assets as security?

Mr. PACKWOOD. The new provision would not disallow interest on indebtedness incurred under the circumstances my distinguished colleague has described, including interest paid by the farmer in your example.

Mr. DOLE. I would like to ask the distinguished chairman to clarify one additional issue. The provision applies only to indebtedness under contracts purchased after June 20, 1986.

As I understand the business, applications for a policy of this sort are often sent after consideration of competing bids, and an application is usually considered to be acceptance of the

insurance company's bid. However, I am informed that the exact point in this process when there is a technical purchase is not clear and may differ from State to State.

My understanding of this provision has been that policies are considered purchased for purposes of the effective date once the policy has been applied for or the insurer is committed to issue it. To avoid any misunderstanding of our intent, I would appreciate having the chairman confirm my understanding.

Mr. PACKWOOD. The understanding of the distinguished majority leader is correct. The new provision does not limit deductions for interest on indebtedness under a policy for which an application was submitted or commitment to issue made on or before June 20, 1986.

Mr. President, I would like to ask the distinguished Senator from Louisiana if he shares my views on each of these issues.

Mr. LONG. I am pleased to be able to confirm that my views on how these items should be interpreted are the same as those of the chairman and the majority leader.

ESOP'S AND PENSION PLAN SPINOFF TERMINATIONS

Mr. President, I would like to engage the distinguished chairman of the committee, Senator PACKWOOD, in a brief colloquy concerning one aspect of an amendment in this bill regarding employee stock ownership plans [ESOP's].

The ESOP provisions in this bill were proposed by me and originated in the Finance Committee. Thus, it would be useful if the committee chairman and key conferee were to confirm the interpretation of one aspect of section 4980(c)(3) of the bill concerning the provision providing an exemption from the proposed 10-percent tax on pension plan asset reversions to the extent that amounts that would otherwise be reversion amounts are transferred to an ESOP.

The bill provides that the exception for reversions transferred to ESOP's applies if at least half of the participants in the qualified plan—the plan paying the reversion—are participants in the ESOP.

The conference committee report clarifies that for purposes of determining which plan participants in the defined benefit plan—from which assets were transferred to the ESOP—are required to be participants in the ESOP, the conferees intend that only active employees, as opposed to retirees, who are participants in the plan need be included.

In a standard termination of a defined benefit plan, this requirement presents no problem. In a common spinoff termination, however, the plan is split into two parts, with the portion covering retirees spun off as a separate plan and then terminated. Active employees remain in the ongoing plan and are provided for under applicable agency guidelines.

In a spinoff termination, the plan from which the reversion amounts are transferred is technically the spunoff plan for retirees, none of whom are active employees and, thus, none of whom would be required to become participants in the ESOP to which the reversion amounts are transferred.

The issue I wish to clarify is what happens to employees who were participants in a pension plan prior to the spinoff termination and who thereafter remain active employees of the employer sponsoring the ESOP. It is my understanding that 50 percent of such employees are to be included in the ESOP to which the reversion amounts are transferred.

Thus, let me confirm with the distinguished sponsor of the amendment that this interpretation is correct. It is my understanding that the amendment is intended to cover reversions attributable to spinoff termination transactions provided that employees participating in the ongoing plan—from which the reversion amounts are transferred—at the time of termination are also counted when determining—under section 4980(c)(3)(D)—whether 50 percent of participants in the terminated plan are required to be included as participants in the ESOP.

Mr. PACKWOOD. I agree with Senator LONG's interpretation. The intent is to ensure that at least half the participants in a defined benefit pension plan—from which reversion amounts are transferred—will be included as participants in the ESOP to which those amounts are transferred, provided they are still employed by the employer sponsoring the ESOP.

Mr. CHAFEE. I understand that Blue Cross and Blue Shield organizations no longer will be tax exempt as social welfare organizations after December 31, 1986.

Mr. PACKWOOD. That is correct, but those organizations will be allowed a special deduction in recognition of their community service activities. The deduction is equal to the excess of 25 percent of the organization's claims and administrative expense for the taxable year over the organization's prior year's surplus.

Mr. CHAFEE. I would appreciate the chairman's clarifying some aspects of that important provision. The bill limits the use of the deduction to existing Blue Cross and Blue Shield organizations which do not materially change their operations after the date of the conference agreement. Does this mean that any change in the organization's operations after that date will cause it to lose the deduction?

Mr. PACKWOOD. Certainly not. The purpose of the limitation is to deny the deduction to the organization only if it makes a change in its operations which is so material that the change has the effect of eliminating coverage for a high risk segment of its business. An example of such a material change would be elimination of coverage for individuals.

Mr. CHAFEE. Would offering a new product, such as a special plan for nonsmoking individuals, or changes in benefits offered to high risk segments of business, constitute a material change?

Mr. PACKWOOD. Not at all. The committee is fully aware of the dynamic nature of the health benefits industry and recognizes that consent changes in products and benefits are the order of the day. We cannot expect the Blue Cross and Blue Shield organizations to freeze their operations and not adapt to their changing environment.

Mr. CHAFEE. Would an increase in the organization's existing premium rate structure to cover anticipated costs of coverage of individual or small group subscribers be a material change in operations?

Mr. PACKWOOD. Not at all. The organizations are not required to lose money on their high risk business.

Mr. CHAFEE. I also have a technical question concerning the calculation of the surplus for purposes of determining the amount of the special deduction. I notice there is a provision concerning weakening of loss reserves after the date of the Conferees' action. How does that work?

Mr. PACKWOOD. The conferees wanted to make clear that the organizations' 1986 loss reserves would not be changed artificially to reduce taxable income in 1987. We intend that the incurred-but-not-paid claims reserve at the end of 1986 will be the claims incurred in 1986 and actually paid in 1987. That amount will be used for purposes of both determining both the surplus at December 31, 1986, and the opening loss reserve at January 1, 1987. Use of actual experience to determine those amounts will eliminate potential controversy over the proper amount of the surpluses and reserves for 1987 tax purposes.

Mr. CHAFEE. Thank you, Mr. Chairman. Your clarifications will make it much easier for the Blue Cross and Blue Shield organizations to determine their federal income tax liability in 1987. We will be monitoring the organizations' experience with the new provisions to determine if revisions are necessary.

Mr. HATFIELD. Mr. Chairman, we are now considering the conference report on H.R. 3838, the Tax Reform Act of 1986, and the statement of managers. On June 24, 1986, during the Senate debate on the Senate amendments to H.R. 3838, you and I discussed the meaning of "materially par-

ticipating" as that term applies to condominium hotel unit owners in determining whether their activity is active or passive. The statement of managers states that "materially participation" has the same meaning in the conference report as set forth in the Senate report. Am I correct in understanding that our discussion on June 24, 1986, on the floor of the Senate, in which we clarified the meaning of the Senate report in this regard, continues to be an accurate statement of the intended meaning of "material participation" as defined in the Senate report and now adopted in the conference report on the subject we discussed?

Mr. PACKWOOD. Yes, Senator, you are correct. Our clarification of the meaning of "material participation" in our discussion of condominium hotel unit owners on June 24, 1986, on the floor of the Senate, carries over from the Senate report and applies fully and in its entirety to the definition of "material participation" as the term is used in the conference report on H.R. 3838 before us today.

MIRROR SUBSIDIARIES

Mr. DOLE. Mr. Chairman, as you know, the conferees agreed to a number of sweeping changes to subchapter C of the Internal Revenue Code, including repeal of the general utilities doctrine. While I believe the conference report is clear on this particular point, I would like to confirm my understanding that Treasury Regulations section 1.1502-34 will continue to apply for purposes of defining the scope of section 332(b) and new section 337. In particular, I would like to confirm that so-called mirror subsidiary transactions will not be affected by the repeal of general utilities.

While the Treasury Department has authority to propose regulations changing the treatment of mirror subsidiary transactions on a prospective basis, they are not required to do so by this legislation. In my opinion, it would be unsound economic and tax policy to prohibit such transactions. Indeed, the prevailing view as reflected in all major studies on reform of subchapter C, is that this type of transaction should be facilitated. In any event, I hope that Treasury will take no action in this area by regulations. This issue, and myriad others, are properly the subject of the Treasury report on subchapter C that is mandated by section 634 of the bill.

Mr. PACKWOOD. My understanding of the conference report regarding section 332 and mirror subsidiary transaction is the same as that of the majority leader. While this legislation does give the Treasury Department broad authority to promulgate legislative regulations, I agree that the focal point of the Treasury's efforts should be on timely completion of the subchapter C report. I share your view that it would be inappropriate to change the treatment of mirror subsidiary transactions before a full Treasury review of subchapter C, and trust that we would be notified in advance of any such efforts.

Mr. DOLE. I thank the distinguished chairman for sharing his views on this subject.

EFFECT ON NOL RULES ON CONTINGENT INTERESTS

Mr. DOLE. The effective date for implementing amended section 382(1)(3)(A) is ambiguous as it pertains to contingent interests.

It is my understanding that contingent interests arising prior to January 1, 1987, for example, contingent options created in business transactions occurring prior to that date, are not treated as ownership changes merely by operation of the January 1, 1987, effective date. Does the distinguished chairman agree that this is a correct interpretation?

Mr. PACKWOOD. I share the majority leader's interpretation of this provision.

INSTALLMENT INDEBTEDNESS

Mr. DOLE. I understand that the conference report treats a taxpayer's allocable installment indebtedness as a payment received on an applicable installment obligation. Specifically, the disposition on an installment basis, after August 16, 1986, of real property used in a business or held for the production of rental income is subject to the proportionate disallowance rule if the sales price exceeds $150,000.

The conference report also authorizes the Treasury Department to prescribe regulations to prevent circumvention of the proportionate disallowance rule through the use of related parties, passthrough entities, or intermediaries.

I would like to clarify that the proportionate disallowance rule will not apply if, prior to August 16, 1986, there is a disposition on the installment basis of less than a 50-percent interest in a partnership that owns only nondealer rental real property. Does the distinguished chairman of the Finance Committee agree that this interpretation is correct?

Mr. PACKWOOD. The majority leader's understanding of the provison is correct. A disposition on the installment basis of nondealer rental real property, whether directly or indirectly, prior to August 16, 1986, will not be subject to the proportionate disallowance rule.

APPLICATION OF PASSIVE LOSS RULES TO CLOSELY HELD CORPORATIONS

Mr. JOHNSTON. Mr. President, I wish to confirm my understanding of the application of the new so-called passive activity loss and credit rule that is embodied in section 501(a) of the conference report to accompany H.R. 3838, the Tax Reform Act of 1986. As I understand the conference agreement: First, rental activity is per se classified as passive activity; second, income derived from the investment of working capital is characterized as portfolio income; third, C corporations may offset losses from passive activities against income from an active trade or business but not against portfolio income; and fourth, losses from an active trade or business may be offset against income derived from the investment of working capital and vice versa.

To assure that my interpretation is correct, I would like to ask the distinguished chairman of the Finance Committee to confirm the accuracy of a number of examples of this rule. I also ask unanimous consent that a chart summarizing the facts in these examples be made a part of the RECORD at this time.

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

	Equipment leasing activity	Real estate rental activity	Active trade or business	Income from working capital
1	($200)	($200)	$500	$100
2	(200)	(200)	(500)	100
3	(200)	(200)	(500)	(100)
4	200	(200)	500	100
5	200	(200)	(500)	100
6	200	(200)	(500)	(100)
7	(200)	200	500	100
8	(200)	200	(500)	100
9	(200)	200	(500)	(100)
10	200	200	500	100
11	200	200	(500)	100
12	200	200	(500)	(100)
13	200	200	500	(100)
14	200	(200)	500	(100)
15	(200)	200	500	(100)
16	(200)	(200)	500	(100)

Mr. JOHNSTON. First, do I understand that if a closely held C corporation has $400 in losses from passive activities—such as equipment leasing and/or real estate transactions, $500 in income from an active trade or business—which is not a passive activity—and $100 of portfolio income, the company may offset the $400 in passive losses against the $500 of active trade or business income, leaving taxable income of $200, $100 or which is attributable to the active trade or business and $100 of which is attributable to working capital—portfolio income.

Mr. PACKWOOD. The Senator from Louisiana's understanding is correct.

Mr. JOHNSTON. If a closely held C corporation had $400 in losses from passive activities, $500 in losses from an active trade or business and $100 in portfolio income, its $100 in portfolio income can partially offset the $500 in losses from an active trade or business, leaving a $400 loss carryforward from the active trade or business and a $400 passive loss carry forward.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a closely held C corporation had $400 in losses from passive activities, $500 in losses from an active trade or business and $100 in

losses from portfolio income, the company could carry forward $400 in passive losses and $600 in other losses.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a closely held C corporation had $200 in equipment leasing income, $200 in real estate activity losses, $500 in active trade or business income and $100 in portfolio income, the company could net its equipment leasing income against its real estate loss, giving it $600 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If this corporation had $200 in equipment leasing income, $200 in real estate activity losses, $500 in active trade or business losses and $100 in portfolio income, the equipment leasing activity income would totally offset the real estate activity losses. The company could then use the $100 in portfolio income to partially offset its active trade or business losses, leaving a $400 carryforward of losses from the active trade or business.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing income, $200 in real estate activity losses, $500 in active trade or business losses and $100 in portfolio losses, the equipment leasing activity income would offset the real estate rental activity losses, leaving $600 in carryforward losses that are attributable to the active trade or business and the portfolio income account.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing activity losses, $200 in rental real estate income, $500 in active trade or business income and $100 in portfolio income, the equipment leasing and rental real estate activities will completely offset each other, leaving $600 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing activity losses, $200 in rental real estate income, $500 in active trade or business losses and $100 in portfolio income, the equipment leasing and rental real estate activities will completely offset each other. The $100 in portfolio income would partially offset the $500 in losses from active trade and business, leaving $400 in active trade or business losses to be carried forward.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the closely held C corporation has $200 in equipment leasing losses, $200 in rental real estate activity income, $500 in active trade or business losses and $100 in portfolio losses, the equipment leasing activity would completely offset the real estate rental activity income and the company could carry forward $600 in losses from its other activities.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in income from passive activities, $500 income from its active trade or business and $100 in portfolio income, it would have $1,000 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in passive activity income, $500 in losses from its active trade or business and $100 in portfolio income, the passive activity income could partially offset $500 in losses from the active trade or business. The company would also be able to use the remaining $100 in losses from the active trade or business to totally offset its portfolio income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in passive activity income, $500 in losses from its active trade or business and $100 in portfolio losses, it could use the passive income to partially offset its active trade or business loss, leaving it a $200 loss carry forward that is equally attributable to its active trade or business and its portfolio account.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in passive activity income, $500 in active trade or business income and $100 in portfolio losses, it could use its portfolio loss to partially offset the income derived from the active trade or business, leaving it with $800 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the closely held corporation had $200 in equipment leasing income, $200 in rental real estate losses, $500 in active trade or business income and $100 in portfolio losses, its equipment leasing income would offset its rental real estate losses. It could also use its portfolio loss to partially offset its active trade or business income, leaving it with $400 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing losses, $200 in rental real estate income, $500 in active trade or business income and $100 in portfolio losses, its equipment leasing activity would offset its rental real estate activity and the $100 in portfolio losses could partially offset the active trade or business income, leaving it with $400 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. Finally, if a company had $400 in passive losses, $500 in active trade or business income and $100 in portfolio losses, the passive losses, $400, and portfolio losses, $100, would completely offset its active trade or business income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. I thank the distinguished chairman for his assurances.

SECTION 401(k) MASTER PLAN

Mr. BAUCUS. Section 1142 of the conference agreement pertains to master and prototype plans for qualified cash or deferred arrangements under section 401(k). A master or prototype plan is a plan whose form is approved by the National Office of the IRS. An employer that adopts a master or prototype plan, making only those elections permitted in the plan, can rely on the plan's qualification under the relevant law.

The master and prototype program is not dictated by the Tax Code but is instead set up by the IRS as a streamlined procedure to handle its workload while eliminating paperwork for small employers. These plans are most suitable for small businesses with 100 or fewer employees. I understand that a master plan can cost as little as $100 to a small employer who wishes to set up a 401(k) plan for himself and his employees, as compared with a typical cost range of $1,500 to $10,000 in legal fees for an individually structured plan. Also, adoption of a master plan would save the employer time and even reduce IRS workloads by cutting down on the number of plan approval requests.

The Senate bill required IRS to begin issuing determination letters by May 1, 1987, to make 401(k) plans more widely available to small businesses. The conference report indicates that IRS will begin accepting applications for opinion letters by May 1, 1987. Is my understanding correct that this change will delay the availability of 401(k) plans at a reasonable cost to small businesses?

Mr. PACKWOOD. Yes, the Senator's understanding is correct. Because of the pending backlogs at IRS, a May 1, 1987, deadline for determination letters was administratively impossible. However, it is unfair to penalize small employers any further beyond the time delay provided to IRS.

I expect that, even with the delaying provision of the final language, the IRS will make every effort to issue favorable opinion letters on master and prototype 401(k) plans as quickly as possible. I have heard of cases where sponsoring organizations have waited over 2 years to receive final approval of their plans. The deadline imposed in this legislation shows that Congress intends that such delays will not occur in the future.

Mr. BENTSEN. Mr. President, section 1301 of the bill provides that a public approval requirement will apply to all private activity bonds, as provided in new section 147(f) of the 1986 code. Under section 1316(a) of the bill, a land program with a long history in my State, the Texas Veterans Land Bond Program, is now characterized as a private activity bond, and will be subject to this public approval requirement. These bonds are issued to fund a pool of loans to Texas veterans meeting certain State law criteria, and they are issued pursuant to constitutional referenda approved, from time to time, by the voters of the State of Texas. It is my understanding that bonds issued as part of the Texas Veterans' Land Bond Program pursuant to any prior or future referendum approved by the voters of the State of Texas amending article III of the constitution of the State of Texas will satisfy the requirements of such new section 147(f) even though the identity of individual borrowers/mortgagors and the location of land to be financed is not known prior to or on the date such bonds are approved or issued. It is also my understanding that such a referendum amending the Texas Constitution will satisfy the requirements of section 147(f) provided a public hearing is held with respect to any issue subsequent to the first issue covered by the referendum.

I want to ask the chairman if my understanding is correct.

Mr. PACKWOOD. The Senator from Texas is correct. The public approval requirement will be satisfied in the circumstances he described.

Mr. MOYNIHAN. I have a question with respect to the treatment of tax and revenue anticipation notes issued by State and local governments to finance their working capital needs for periods during which they incur cashflow deficits. In particular, I am concerned with the impact of the arbitrage rebate rules on these financings which are essential to the day-to-day operations of many of our State and local governments.

In general, issuers of State and local government obligations are not required to make rebate payments to the Federal Government, if the proceeds of the obligations are spent within 6 months of issuance. Section 144 of the Internal Revenue Code, as amended by the bill, provides a safe harbor for determining whether the proceeds of the obligations have been spent. This safe harbor indicates that the proceeds will be deemed to be spent if the size of the issue of tax and revenue anticipation notes does not exceed a specified amount. It is my understanding, however, that the safe harbor stated in the code is not intended to be the sole method by which an issuer of tax and revenue anticipation notes may establish that it has spent the proceeds within 6 months of the issuance of the notes. State and local government issuers of such notes will be exempt from any rebate requirement if they have actually spent the proceeds of the notes within 6 months of their issuance.

Mr. PACKWOOD. That is correct. The safe harbor provision does not limit the ability of issuers of such notes to qualify for the 6 month expenditure exception to the rebate rules, and it was not the intention of the conference committee to do so.

DEPRECIATION AND ITC TRANSITION RULES

Mr. GLENN. I would like to confirm with the distinguished Senator from Oregon the operation of the transition rule for supply or service contracts set forth in section 204(a)(3) of H.R. 3838 as reported out by the conference committee and currently under consideration by the Senate, particularly its application to holders of television franchise rights H.R. 3838 as passed by the Senate on June 24, 1986, contained section 202(d)(11) which provided, in part, that the amendments made by section 201 would not apply to any property which is readily identifiable with or necessary to carry out a binding obligation with a municipality under an ordinance granting television franchise rights if the ordinance was enacted on July 22, 1985, and a construction contract was signed before April 1, 1986. While the version of H.R. 3838 presently under consideration by the Senate does not contain the precise language set forth in section 202(d)(11) of the bill as originally passed by the Senate, the conference report accompanying the conference's version of the bill states that with respect to the supply or service contract exception, the conferees wish to clarify that this rule applies to cable television franchise agreements embodied in whole or in part in municipal ordinances or similar enactments before March 2, 1986—January 1, 1986, with respect to the investment tax credit. I would like to confirm that the supply or service contracts transition rule, the statutory language of which was not amended by the conference committee, is intended to cover the holder of any television franchise which would have been covered by the original section 202(d)(11).

Mr. PACKWOOD. That is correct.

Mr. GLENN. Thus, in the case of a cable franchise which was granted a cable franchise on July 22, 1985, and pursuant to which a definitive franchise agreement was negotiated, and subsequently approved and signed after March 1, 1986, and which entered into a construction contract prior to April 1, 1986, its cable related property would fall within the supply or service contracts transition rule?

Mr. PACKWOOD. That is correct. It was the intent of the conferees, as indicated in the conference report, that the definitive franchise agreement which was contemplated by the July 1985 ordinance would be considered embodied in that ordinance and as such would qualify as a supply or service contract entered into prior to March 2, 1986, with respect to the depreciation rules and January 1, 1986, in the case of the investment tax credit rules.

Mr. GLENN. I thank the distinguished Senator for his clarification of this issue.

Mr. PACKWOOD. I thank the Senator.

FERC LICENSE RULE

Mr. GLENN. Mr. President, I want to ask the distinguished chairman of the Finance Committee a question about the so-called FERC license rule.

Under section 204(a)(2) of the bill, property would be grandfathered from loss of the investment credit and current depreciation allowances if the property is part of a project that the Federal Energy Regulatory Commission certified before March 2, 1986 as a qualifying facility for purposes of the Public Utility Regulatory Policies Act.

There are two ways that a project can become a qualifying facility. FERC regulations provide that the owner or operator of a facility may either send the agency notice that the facility meets the requirements for a qualifying facility or request a formal order from FERC certifying the project.

The statement of the managers says that the project certified by formal order have grandfather protection under the FERC rule. A project that a developer has simply put FERC on notice as a qualifying facility is not protected. That's because the latter project has not been certified by FERC.

My question is: What happens if FERC acknowledged in a formal order before March 2, 1986, that a project is a "qualifying facility," but the focus of the order was a separate issue?

A constituent of mine, Energy Conversions of America, Inc. [ENCOA], has been working since 1978 to build a facility in Cincinnati that will burn the city's garbage to generate electricity. The electricity will be sold to the local utility. ENCOA signed a contract with the city in 1979 and began negotiating with the utility in 1982. Although a construction contract has still not been signed, ENCOA made a series of trips to the Federal Energy Regulatory Commission beginning in 1982 for orders to help in the negotiations. For example, in 1982, a hearing officer for the State of Ohio insisted that the State lacked authority, because of Federal preemption, to become involved in determining the utility's avoided cost for purchasing electricity from the Cincinnati facility. ENCOA sought an order from FERC

setting the rates that the utility should pay for the electricity. The FERC order states, among other things that—and I am reading:

[When completed, ENCOA will be the operator of a qualifying small power production facility as defined in section 201 of the Public Utility Regulatory Policies Act of 1978 [PURPA] and section 292.204 of the Commission's regulations.

The question is: Does the FERC rule in the bill cover this project?

Mr. PACKWOOD. It was the intent of the conferees as indicted in the conference report that the FERC rule in the bill would cover a facility where a FERC order states that when completed, a company will be the operator of a qualifying small power production facility as defined in section 201 of PURPA.

Mr. GLENN. I thank the distinguished Senator for his clarification.

Mr. BYRD. Mr. President, the tax conference report before us today responds to the demand of the American people for fundamental reform of our tax system. It closes down the most abusive tax shelters and many unwarranted cooperate tax loopholes. It also establishes tough minimum tax provisions for both high-income individuals and corporations.

Tax shelters have been growing rapidly in recent years. Those who sell tax shelters blatantly advertise that, if your income is high enough, you can stop paying taxes. The boom in tax shelters has not only increased cynicism about the Tax Code; it has also corroded public confidence in Government.

The conference report also takes 6 million of the working poor off the income tax rolls.

If we fail to seize this opportunity to adopt these major reforms of our tax system, another opportunity may be a long time in coming.

I regret that some middle-income taxpayers will face a tax hike under this bill.

Yet, this conference report has moved the starting date for rate reductions up by 6 months to January 1, 1987—the same date that it removes many deductions. Therefore, the average taxpayer's weekly paycheck will rise 3 months from now, not 9 months from now. This means that, despite the loss of some deductions, far fewer middle-income people will have a tax hike next year and many more will get a larger tax cut.

Moreover, the conference report does better by the middle class in its treatment of IRA's than did the Senate bill. Full deductibility for IRA contributions is assured up to income levels that cover 80 percent of taxpayers and partial deductibility is retained for another 10 percent of taxpayers.9

However, I am particularly concerned about our capital-intensive industries, such as chemicals and steel, coal, natural gas, and oil. These are the very industries that are predominant in my State of West Virginia.

The economic health of these industries has already been eroded. The repeal of the investment tax credit will lessen the money invested in modernization and rehabilitation of these basic industries, which could lead to a further erosion of our competitive position.

I am pleased that the conference report does provide a transition rule to allow the steel industry to utilize some of the investment tax credits that its firms have accumulated, while requiring that any credits that are utilized by a steel company must be used for modernization of steel plant and equipment. The elimination of the investment tax credit and reduction of the R&D credit will reduce incentives for industry to make this country more competitive. However, those two provisions may be offset by other provisions that can improve our competitiveness.

Finally, bearing in mind our experience with the 1981 tax bill, I am concerned that the revenue estimates for this bill may turn out to be overly optimistic, thus compounding the already difficult task of reducing Federal budget deficits to meet the Gramm-Rudman targets.

Indeed, the projections of economic performance over the next 5 years themselves are controversial—even without considering changes in the Tax Code. There is a wide margin for error and the revenue losses for 1988 and 1989, currently estimated at $16.7 billion and $15.1 billion, respectively, may be understated.

It will be important that Congress carefully monitor the impact of this bill on the Nation's industry and on competitiveness, as well as on Federal revenues, as this bill goes into effect. If this measure results in further erosion of our manufacturing base and our industrial competitiveness Congress must be prepared to take the necessary actions to bolster them in the most efficient way possible.

I nonetheless believe that, on balance, it is worthy of support for the basic reforms it achieves. I will, therefore, reluctantly vote for this bill, and hope that the possible consequences, to which I have referred, do not materialize.

The PRESIDING OFFICER. The Senator from Louisiana retains the time.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Louisiana wish to yield his time?

Mr. LONG. Mr. President, I yield my time to the Senator from Oregon.

The PRESIDING OFFICER. The Senator, the distinguished chairman of the Senate Finance Committee [Mr. PACKWOOD] is now recognized.

Mr. PACKWOOD. I thank my good friend and distinguished colleague from Louisiana.

There are a few remarks that I wish to make about him very shortly, but for the moment I would like to yield 5 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas, the distinguished majority leader, is now recognized.

Mr. DOLE. Mr. President, I thank the distinguished chairman of the committee.

Mr. President, it has taken a long time to get to this point. In his 1984 State of the Union Address, President Reagan first called for the Treasury Department to report to him on tax reform options. The President sent his proposals to us in May 1985, and we have been working on tax reform ever since. There were several times when the media reported that tax reform was dead, and I will admit to having some doubts myself whether tax reform could survive the legislative process.

But tax reform has survived, and we now have come to the final step—approval of this conference report. I hope the Senate will vote overwhelmingly to take this final step to send tax reform legislation to the President this year.

REAL REFORM

Tax reform means different things to different people and, for that reason, we cannot expect any comprehensive change in the tax laws to be adopted by unanimous consent. However, this conference report can lay claim to the title "tax reform" by any fair definition of the term.

The easy thing to do would be to vote against tax reform. I am sure that every Member has received more letters against various provisions in the bill than we would care to count. But we should not forget that people are less inclined to contact us if they like something we are doing than if they hope we won't do it. I urge my colleagues to balance the good in this conference report against the complaints about particular provisions. I am confident that they will come to the same conclusion as this Senator has—it is good legislation and it should become law.

There are a number of items which I strongly believe should have been handled differently or not changed at all. For instance, I am particularly concerned about the inadequate transition from present law to this revised tax system, and I have said so on several occasions. But all the concerns should not overshadow the basic soundness of this bill.

GENERAL FAIRNESS VERSUS SPECIAL INCENTIVES

To my mind, the most important feature of any tax reform legislation is fairness. Without fairness and the per-

ception of fairness, our system of voluntary compliance falls apart. In fact, in recent years we have seen the so-called compliance gap rise to a point where unreported taxes have risen to nearly $100 billion per year. This has occurred despite our efforts in 1982 and 1984 to increase reporting requirements and increase penalties for noncompliance.

Obviously, many Americans are not paying the taxes they owe. I expect that much of the talk of complexity and lack of fairness in the tax laws really translates into a suspicion that the average taxpayer is missing something that a more sophisticated taxpayer is using to his advantage. It is easy to understand a taxpayer's reluctance to pay all the taxes he owes when he reads that corporations with huge reported profits pay little or no income tax or that wealthy individuals invest in tax shelters to avoid taxes they otherwise would have to pay.

This bill goes a long way toward dispelling this cynicism. However, one problem we have encountered is that we now know a lot more about how individuals and corporations avoid paying taxes on all their economic income. They reduce taxes by taking advantage of the incentives that we have enacted to encourage different activities. For example, they take advantage of deductions for interest that they pay, they invest in depreciable property and take advantage of the investment tax credit and accelerated depreciation, and they invest in property that can qualify for the special tax rate for long-term capital gains.

Not surprisingly, many Members have expressed misgivings about reducing or eliminating these and other special incentives. For this reason, we did not eliminate or reduce most employee benefits. We did not eliminate the deduction for State and local income or property taxes. We did not reduce or eliminate the home mortgage deduction. We retained IRA's for most Americans, and we have expanded pension coverage for employees. These are just a few examples of special incentives that will remain in the law. There are many more and there is nothing wrong with that. We have had an opportunity to review and reevaluate our priorities, and we have made the decisions we think are appropriate.

THE BASIC REFORMS OF THIS LEGISLATION

The Tax Reform Act will make basic changes in our tax laws which almost everyone will applaud. It will, for example, significantly increase the income level at which tax liability begins. As a result, over 6 million lower income Americans will no longer be liable for income tax. This is a change that I had hoped to accomplish, and had proposed on three different bills, while I was chairman of the Committee on Finance.

The bill will also significantly reduce tax rates. When fully effective, it will dramatically reduce the maximum rate for both individuals and corporations. This should help take tax planning out of the decisionmaking process on most occasions.

Most individuals will be in the 15-percent bracket, but, perhaps more important, most individuals and particularly lower and middle income taxpayers will have major decreases in tax liability. It is worthy of note that, even though we will reduce the top individual tax bracket to 28 percent, lower and middle income taxpayers will receive a larger percentage tax reduction than higher income individuals. For instance, taxpayers with incomes between $10,000 and $20,000 will have a tax cut, on average, of 22.3 percent. Taxpayers with incomes between $20,000 and $30,000 will have a tax cut of 9.8 percent. On the other hand, taxpayers with incomes over $100,000 will have a tax cut of less than 2.5 percent.

On the corporate side, the conference report will cause income from different types of business activities to be taxed in a more similar manner. When we enact different incentives for different industries, whether it be the investment tax credit for buying equipment or the 20-percent reduction in tax liability for life insurance companies, we are, in effect saying that these taxpayers do not have to pay taxes at the same rate as other businesses. This legislation stil retains some incentive for capital-intensive industries, but it takes the view that tax rates should be low for all corporations, not just a select few. So we will have a 34-percent maximum rate for all corporations, not a 46 percent rate for some and a negative rate for others.

As I suggested earlier, we retained some tax incentives in the tax law that will reduce taxable income in some cases below real economic income. That caused some concern about whether some corporations could escape tax, even under the new rules. As a result, the Senate adopted a very stringent minimum tax. The House had a somewhat different and less inclusive approach, but they had a higher rate. The conference agreement adopts a comprehensive minimum tax similar to the Senate bill and adopts the tax rate from the Senate bill. We should feel confident that we now have an "escape-proof" minimum tax.

LEVEL OF CORPORATE TAX LIABILITY

There is some concern about the overall increase in corporate tax liability. In the short run, I think some of this concern is justified. In 1987, corporate income taxes are estimated to increase by $25 billion. At the same time, individual taxes will be reduced by almost $14 billion. That will help, but there will be a net 1-year tax increase of $11.4 billion. Of course, over 5 years the bill is estimated to be revenue neutral, but we may have a somewhat rougher transition than we would have hoped.

Most economists, including the Council of Economic Advisors, believe that over the long run this bill will have a positive effect. GNP will be higher than if we retained present law. Assuming that they are right, and we really have no reason to believe otherwise, this legislation will not just be a cosmetic change with some positive psychological and compliance benefits. It will help spur economic growth as the President intended when he first sent his proposals to Congress for our consideration. This legislation will inevitably change the flow of capital in this country. However, there is good reason to believe that this change will be for the better—that there will be a more efficient allocation of capital and a stronger economy in general.

RATE REDUCTION AND FUTURE PROSPECTS

To many people, tax reform means simply lower rates. They treat the more comprehensive definition of what is income as a necessary evil to get the lower rates. Others would say that defining income for tax purposes so that it more nearly resembles common understanding of income in an economic sense is reform in its own right. But, whatever way you analyze it, the only thing that has allowed tax reform to succeed is that it combines both rate reduction and so-called base-broadening.

If we had merely adopted the rate reduction contained in this bill, we would have had a reduction in revenues which would have greatly increased the budget deficit. If we had just broadened the tax base as contained in this conference report, we would have increased revenues enough to jeopardize our whole economy. Neither approach would have had the slightest possibility of success.

All this is to say that I would sincerely hope that no one seriously thinks that unraveling either part next year is a good idea. I do not think such an effort would succeed.

This conference report is not perfect and I expect that we will have to follow next year with a technical corrections act. There is nothing unusual in that. We have followed each major piece of tax legislation in recent years with a fairly substantial technical corrections bill. In addition to the inevitable typographical errors, I am sure that there will be provisions that do not work the way we intended. I also would hope that we could smooth out some of the rough spots in this legislation. For instance, the so-called phantom 33-percent rate is an issue which I believe should be addressed.

However, I hope we will remain deaf to the pleas to reintroduce special tax

benefits paid for by raising the rates. Similarly, I hope that we will not take seriously arguments in favor of raising revenues by raising the rates that we are now voting to reduce. I have already heard some suggest that we could raise $100 billion by freezing the tax rates at the levels applicable in 1987 or that we could raise $20 billion by not letting the top rate drop below 33 percent in 1988. I would hope my colleagues will ignore all suggestions to raise the rates. We are going to have to address the deficit next year. I am sure that there will be proposals to raise tax rates, rather than make more difficult choices, but the American taxpayer deserves better than that.

CONTRIBUTIONS OF SENATOR PACKWOOD AND SENATOR LONG

I have already mentioned the efforts of President Reagan. We would not be debating this conference report today absent his efforts. However, the distinguished chairman of the Finance Committee, BOB PACKWOOD, also deserves much of the credit for this bill. It was the distinguished Senator from Oregon who initiated the proposals which allow the rates to be reduced even below the levels proposed by the President. And it was the distinguished Senator who developed the consensus in committee that brought tax reform back from a hope to a possibility and now nearly a certainty.

We should also recognize the extraordinary contributions of the distinguished ranking member and former chairman of the Finance Committee, RUSSELL LONG. As a member of the Finance Committee and a former chairman myself, I know first-hand how important the distinguished Senator from Louisiana is when you want to put together a major tax bill or just about anything else. But my colleagues know that you don't have to be a member of the Finance Committee to realize what an effective Senator RUSSELL LONG is. This is Senator LONG's last tax bill and it shows his influence in many ways. I will personally miss the Senator's wise counsel in the years to come. I know we all will.

CONCLUSION

I urge my colleagues to agree to this conference report. It may not be the last tax reform measure that any of us see in our careers in the Senate, but it is a worthy bill. We can be proud of this legislation and proud that we voted in favor of it. It is a tax bill that we can honestly describe to the American people as tax reform.

Mr. President, I spent most of the day in my office watching the debate. It has been a very good debate. There have been some outstanding statements made. I know that Members either feel good about this bill or they have some problems with it. I guess perhaps when you are in doubt the theory around here is you vote no. But I think this is an exception. I think if there is any doubt, it is doubt whether we went far enough as far as tax reform is concerned. I believe we have made a big, big step in that direction.

There is no doubt about it, it has been bipartisan from the start—nonpartisan may be even a better word. We have had leadership all over this place and all over the House and the White House and around the country. We have had 2 or 3 years of discussion, and it has been on the merits.

As I said, I know tax reform can mean different things to different people. I recall we had withholding on interest and dividend income. Somebody told me that was tax reform but I learned it was not. The President said it was. Treasury said it was. A lot of other people said it was. I said many times my banker got so mad at me over that one he came by and picked up his toaster and set of dishes. So I learned that was not tax reform.

But if there is any doubt, maybe the easy thing to do is to vote no. I hope we have an overwhelming vote in support of this product. I have listened with interest to the distinguished Senator from Ohio [Mr. METZENBAUM], on transition rules, and I do not disagree; if we rifle shot so we pick out one person or one company, this sometimes creates a problem. But the transition rules are not per se bad, they help taxpayers with special circumstances to adjust to change. I think they have always been around. I understand there are even some in Ohio. There are some in Kansas, some in nearly every State.

The final point I would emphasize, because I do not want to detract from the time of the distinguished chairman, is that I am not certain we have gained a lot as far as simplicity but I think we have gained a lot as far as fairness. When I travel around my State and other States, I find most people do not mind paying their taxes—they would rather not—but they do not really want to pay if they believe they are paying more than their fair share compared to someone who is paying zero or very little, whether it is a corporation or somebody with a lot of money who has been legally sheltering his income or taking advantage of the C ode. I do not say it is illegal, but it does not help instill confidence in the system.

I guess the one satisfaction in this bill is that you know that even though you have not closed up every loophole you made a big, big effort. And Congress will meet again next year.

If we have gone too far, as I heard the distinguished Senator from New Mexico indicate earlier, if we do find some of these provisions are creating economic problems, I guess we can address that next year or the year after. But I think there are a number of good things that have been done, and I certainly want to commend everyone for their efforts.

Obviously, the President played a vital role. He was out there giving speeches when the rest of us thought it was all over. I remember when he went to North Carolina State he said he had been interrupted 17 times by applause. I think the distinguished senior Senator from North Carolina said, "Yes, once he said 'Tomorrow is Friday' and the students burst into loud applause." That may not have been an indication of support for the tax bill, but the President hung in there. It was the President, it was the chairman of the Finance Committee, Senator PACKWOOD, it was the distinguished ranking Democratic member of that committee, Senator LONG, it was Senator BRADLEY, it was Senator DANFORTH, Senators on both sides of the aisle. So I would hope when we vote today there will be an overwhelming vote in support of tax reform and fairness for the American taxpayer.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, one of the more diligent reporters covering the Finance Committee and Ways and Means Committee is Jeffrey Birnbaum of the Wall Street Journal. He is writing a book on the passage of the tax bill which, based upon the time he spent with me, will be roughly as long as "The Decline and Fall of the Roman Empire." But he discovered one fact that he has woven a theory around, a very long, almost conspiratorial theory. He has discovered that when I was a senior in high school, I had been assigned to do a little paper on U.S. Senators. I had chosen RUSSELL LONG. Jeff suggests that in the choosing of RUSSELL LONG there was some Machiavellian plot. I assured him it had nothing to do with that; I simply checked when the Senators had been elected. Senator LONG had only been elected in 1948 and could not have done much. Therefore, my paper would not have to be long. [Laughter.]

I had no idea, when I selected RUSSELL LONG as the subject of my paper as a high school senior, that I would one day have the privilege of serving with him and learning from him. I have learned, I think, more from him than I have learned from any other man in my life, perhaps save my father. He is a genius at legislative strategy, he is a true humanitarian, and he is a man who understands that you do not bear grudges in this business. Your enemy this week is your ally next week, and the fact that someone votes against you today will not mean that he is against you forever.

□ 1550

I say that because I know that some of the people who worked hardest on this bill are going to vote against it, and vote against it, in their minds, for good reason.

Clearly, the basic decisions on this bill have to be subjective decisions: Does this bill work? Will this bill help the economy? Will this bill hurt the economy? There is not a person in this room—not RUSSELL LONG, not BOB PACKWOOD, not JACK DANFORTH, not BOB DOLE, not BILL BRADLEY, or anybody else—who can tell you for sure.

Taxes are about more than money; they are about more than economics. They are about fairness—and this bill is fair. This bill is fair for two or three very simple reasons.

Rates: We did not do everything, but we did more than we thought possible a year ago. Rates low enough that most decisions will be based upon what you will earn from an investment rather than how you are directed by the Tax Code.

I simply say again, in concluding—I will be prepared to yield back my time and vote—that there were, there are, 100 heroes in this battle. BILL BRADLEY has been justifiably lauded. JACK DANFORTH has not been sufficiently justifiably lauded. He was a Member of the core group; and when we had vote after vote after vote on this floor, attempting to undo the handiwork of the Finance Committee, only JACK DANFORTH of the core group, of seven, voted time after time against amending the bill. Even BILL BRADLEY and I on occasion voted to amend it.

Then, at the end, JACK DANFORTH, who meant so much to the success of this bill, found himself in opposition, for perfectly moral, understandable reasons. He and I disagree. We are friends. We shall remain friends.

The argument has been made that we did not address the deficit. But I come back again to my conclusion that there is more to taxes than money. We did not solve the deficit problem in this bill. It was questionable whether we would even achieve tax reform. We have.

The minimum tax: So that never again do we have to hear, "Why don't they pay something?" The "theys," of course, are the profitable corporations—in some cases, billions of dollars of profit—that pay no taxes.

Then, the so-called passive loss rule: The net effect of restricting passive losses means that henceforth people are going to invest money for the purpose of making money. I know that sounds strange. But for years in this country, people have been investing money for a different reason. I cannot help but believe that it will be good for the economy of this country if henceforth people put their money into something in the hope that they will make an economic return on their investment.

Those three provisions, in and of themselves, justify voting for this bill: the rates, the minimum tax, the passive losses.

There are 100 other things you could argue pro and con. We have argued all afternoon about the transition rules.

Everyone can vote for this bill with pride and dignity. You can go back to your constituents, the textile mills, the lumber mills, the farms, and the ranches, and you can hold your head up and say, "We did something good for America."

Mr. President, I am prepared, if the Senator from Louisiana is prepared, to yield back my time and vote. I yield back the remainder of my time.

The PRESIDING OFFICER. Is there a request for the yeas and nays?

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report on H.R. 3838. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. GARN] would vote "nay."

Mr. CRANSTON. I announce that the Senator from Illinois [Mr. SIMON] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

I further announce that the Senator from Illinois, [Mr. SIMON] would vote "nay".

The PRESIDING OFFICER (Mrs. HAWKINS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 74, nays 23, as follows:

[Rollcall Vote No. 296 Leg.]

YEAS—74

Andrews	Dole	Johnston
Armstrong	Domenici	Kassebaum
Baucus	Durenberger	Kasten
Bentsen	Evans	Kennedy
Biden	Ford	Kerry
Bingaman	Glenn	Lautenberg
Boschwitz	Goldwater	Laxalt
Bradley	Gore	Leahy
Broyhill	Gorton	Long
Bumpers	Gramm	Lugar
Burdick	Grassley	Mathias
Byrd	Harkin	Matsunaga
Chafee	Hart	Mattingly
Cochran	Hatfield	McClure
Cohen	Hawkins	McConnell
Cranston	Hecht	Metzenbaum
D'Amato	Heinz	Mitchell
Denton	Hollings	Moynihan
Dixon	Humphrey	Murkowski
Packwood	Rudman	Symms
Pell	Sarbanes	Thurmond
Proxmire	Specter	Trible
Quayle	Stafford	Wilson
Riegle	Stennis	Zorinsky
Rockefeller	Stevens	

NAYS—23

Abdnor	Hatch	Pressler
Boren	Heflin	Roth
Chiles	Helms	Sasser
Danforth	Inouye	Simpson
DeConcini	Levin	Wallop
Dodd	Melcher	Warner
Eagleton	Nickles	Weicker
Exon	Nunn	

NOT VOTING—3

Garn	Pryor	Simon

So the conference report was agreed to.

[Applause in the gallery.]

Mr. BYRD. May we have order in the gallery?

The PRESIDING OFFICER. The leader will suspend until the Sergeant at Arms has restored order in the gallery.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Madam President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I would like to say just a few words of congratulations to BOB DOLE who in the passing around of the accolades about the tax bill is not often mentioned.

Yet it was BOB DOLE who, on the day that we started the critical markup in the Senate Finance Committee on the first vote that we had to put back in one of the very, very popular deductions that we had taken out to lower the rates, voted first and before he voted made a very eloquent statement as to why he was going to vote against putting the deduction back in. Had this particular motion to put it back in passed, the bill would fall apart and it would have, and that was a 9-to-9 vote.

But for his leadership and his voting first at that time we would not have had a tax bill out of the committee or through the floor today.

Second, at every turn in the road at any time I needed help or a vote or a proxy he has supported me. He has been behind me on everything we have done on this bill, including late last night when it was questionable whether or not we could get a unanimous-consent agreement, and he gave me the leeway to negotiate anything possible to get the vote today.

In every sense he is deserving of great, great tribute, and I am delighted he was a major part of this bill.

Mr. WEICKER. Mr. President, while I have the floor even though I voted

against the distinguished Senator from Oregon, I am going to tell you I have seen very few true miracles performed out here in the legislative process since I came to the Senate 16 years ago. What he did through committee and on the floor can be classified as a legislative miracle and my hat is off to him, No. 1, and No. 2, the comments which he attributes to our majority leader are well deserved in terms of the majority leader's role.

So my compliments to both of them and certainly, you know, you win some, you lose some. I lose in the sense of the vote but I hope they win when it comes to the economics of this country.

Mr. PACKWOOD. Mr. President, I thank my good friend from Connecticut and while we parted ways on this bill as most of the Senate is well aware, it is very seldom we part ways. We fought more battles back to back for the sake of civil liberties and other rights in the country. I expect looking at some of the things coming down the pike we will be engaged in those battles again.

Mr. WEICKER. I thank my distinguished colleague.

□ 1620

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Madam President, I want to thank my colleagues for their patience and understanding in helping us through the tax reform conference report. I think the vote is an indication of the strength of the package.

I thank again the distinguished chairman, Senator PACKWOOD. I thank the ranking member, Senator LONG.

Mr. BUMPERS. Madam President, will the majority leader yield?

Mr. DOLE. I am happy to yield.

ORDER OF PROCEDURE

Mr. BUMPERS. Can the majority leader give us some idea about how long he thinks we will be in this evening?

Mr. DOLE. I believe it is going to be several hours. We are not going to try to stay in real late. We were somewhat late last evening. I think we can tell in about an hour and a half if we are making real progress. Then I think we should continue. There is still a glimmer of hope of getting out of here next week.

Mr. HATFIELD. Will the majority leader yield?

The PRESIDING OFFICER. (Mr. WILSON). The Senate is not in order. Senators will take their conversations off the floor into the cloakrooms. The Senate will not proceed until order has been restored.

The Sergeant at Arms will assist in restoring order in the gallery.

Senators will please take their conversations off the floor.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. HATFIELD. Mr. President, will the Senator from Texas yield for a moment?

Mr. BENTSEN. I wonder if the Senator from Texas would be willing to yield in order for me to pose a question for the majority leader regarding the calendar.

Mr. BENTSEN. I am pleased to yield to the Senator from Oregon.

Mr. LEAHY. May we have order, Mr. President?

The PRESIDING OFFICER. The Sergeant at Arms will assist in preserving order in the gallery.

Will all Senators please take their conversations off the floor, and will staff take their conversations or themselves off the floor?

The Senator from Oregon is recognized.

Mr. HATFIELD. I thank the Senator from Texas for yielding in order that I may ask the majority leader a question.

In the event that the drug bill now pending before the body is not concluded today, Saturday, what is the majority leader's expectation as to the schedule on Monday regarding particularly the continuing resolution?

Mr. DOLE. As indicated earlier to the distinguished chairman of the Appropriations Committee, if we do not complete the drug bill today, we will turn to the continuing resolution on Monday. I think we have a gentleman's agreement that there will be no votes before 3 p.m. If there are votes requested prior to that time, maybe we could stack the votes. I know the Senator from Oregon would rather not do that, but there have been requests on each side, if we can accommodate them.

Mr. HATFIELD. I would like to see if I could urge the majority leader to see Monday made a working day, and to make it a working day means there has to be a strong probability of votes. I would only say that the most optimistic feeling in my current estimate of the situation is that it will take us perhaps 2½, maybe 3 days to complete the continuing resolution on appropriations which is the largest vehicle on appropriations we have ever acted upon.

I am very hopeful that we will be able to maintain the bill as reported from the Appropriations Committee of the Senate, which was a clean bill. I do not have great expectations that we will be able to do that. But on the other hand, I would like to suggest to the majority leader that once we take up the appropriations continuing resolution that we move through to the completion of it in order to get to the conference with the House in order to get back with the conference report. And therefore, it would be my expectation as comanager of the bill to begin that bill as early on Monday morning as we might convene to go through into the evening at a modest evening hour, and then to begin on Tuesday morning and go through to completion even if it meant all night on Tuesday night.

It is not my choice, but it seems to me that will be the only way we can maintain the schedule of completing the appropriations to fund the Government for the coming fiscal year by the October 1 deadline.

I say to the leader that therefore I hope Senators would be on the deck Monday morning at whatever time we convene and be ready to offer their amendments. If we find ourselves in a situation where we have to have continuing quorums because people are not back from the constituency knowing there are not votes until 3, I would hope maybe that we could make certain that those votes will occur at 3, if we have to make that commitment. I would like to see us be able to say there might be votes at 9:30 if we convene at 9, or if we convene at 9:30, votes could occur anytime thereafter. But I am willing to comply with the majority leader's desire. We may have people here offering amendments before 3 o'clock.

Mr. DOLE. I think that is the problem, if the Senator from Texas will yield. If we say no votes before 3, nobody is going to show up with amendments. Perhaps let me visit with the distinguished minority leader if we are going to do that to try to accommodate those who do not want to miss votes, if we can find others who will be here to offer amendments. We will get back to the Senator in the next couple of hours.

Mr. BIDEN. Will the Senator from Texas yield for a question?

Mr. BENTSEN. Yes.

Mr. BIDEN. I ask the majority leader before he leaves the floor if he is at liberty to tell us what he intends to do with the drug bill? It would be my hope we could finish it in an hour and a half. It is a good bill. We could do that. If we do not finish it tonight, does that mean we are off the drug bill until Wednesday or Thursday?

Mr. DOLE. Hopefully we will complete action on the continuing resolution, and be back on this Wednesday. We will probably have an override on Wednesday.

Mr. BIDEN. I thank the majority leader.

I thank the Senator from Texas.

Mr. BYRD. Mr. President, will the distinguished Senator yield? I would not want the distinguished majority leader to be left standing alone on this matter on the continuing resolution. I fully respect the interest and concern

of the distinguished Senator from Oregon [Mr. HATFIELD]. But I want to say that I will do everything I can on this side to help the majority leader to get amendments up in the interest of stacking those votes until 3:30 or 4, and hopefully at 4 o'clock. But I will certainly try to help them move the matter along.

In the meantime, I want to cooperate with the majority leader in that regard, and with the chairman.

I thank the Senator for yielding.

OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT

Mr. DOLE. Mr. President, what is the pending business.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

The Senate resumed consideration of the bill.

Mr. DOLE. Mr. President, let me indicate that we are on the drug bill. There will be votes. We have been working again throughout the day and yesterday to give Members an opportunity first of all to study the 250-page bill; and, second, the staff on each side to get together.

We think some amendments are acceptable on each side. There are other legitimate—they are all legitimate. But we are not trying to manufacture votes. That is what I am trying to say. There are amendments which will require votes. I am prepared.

I think everybody is prepared to move on that as quickly as we can.

AMENDMENT NO. 3039

(Purpose: to provide additional authorization for the procurement of secure voice radios for federal law enforcement agencies, to earmark certain funds for the same purpose)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. BENTSEN], proposes an amendment numbered 3039.

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

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

The amendment is as follows:

SECTION 1. At the appropriate place in the bill, insert the following language:

In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation	$4,000,000
Secret Service	5,000,000

SEC. 2. Amend Title II, Subtitle J (Authorization of Appropriations for Drug Law Enforcement) Sec. 1451 (a), by adding after the words "All Source Intelligence Center;" in line seven, the following language:

further provided, that of the funds authorized to be appropriated under this subsection, $7,000,000 shall be for the procurement of secure voice radios for the Drug Enforcement Administration.

□ 1630

Mr. BENTSEN. Mr. President there seems to be little doubt that the problem of slowing the flow of illegal drugs into the United States is one that requires additional assets at the Federal level. All available statistics indicate that our borders are being flooded with shipments of heroin, cocaine, and marijuana, to such an extent that our law enforcement personnel cannot begin to stop more than a small fraction of them. The measure that we are considering here in this Chamber contains numerous provisions that address this problem. There is one area, however, where there is a gap, and this amendment fills that gap.

One of the problems experienced by our law enforcement agencies is that they communicate by radio, and most of these radios broadcast in the clear, without encryption. It is easy—painfully easy—for criminals to intercept these transmissions and thereby avoid the net that is being cast for them. We have heard stories of drug smugglers listening in on DEA or other officials by means of sophisticated vans, crammed with the latest in electronic gear.

I am here to tell you that this is not necessary, and in doing so, let me say that I am not revealing anything that is not already well-known by drug smugglers.

I say sophistication through the mail, from a commercial publisher, a book—like the one I have here—detailing the frequencies used by such agencies as DEA, FBI, Customs, Secret Service, and others. My office ordered this book from an advertisement in a popular magazine. Nothing about it is classified, and here you can find the radio frequency used by the DEA's EPIC Center in El Paso, TX. Or perhaps you would rather know what frequency some other agency is using in some other part of the country. It is all here in this book, and it is all perfectly legal. Then all you need is a scanner of the type available through any number of consumer electronics stores, and you are in business.

OMB has not been kind to the need for secure voice communications for Federal law enforcement agencies. For example, they cut DEA's 1987 request for secure voice walkie-talkies to zero, and they have historically placed a very low priority on this as a budget item.

To me, it makes little sense to devote literally hundreds of millions of dollars a year to law enforcement efforts directed against the smuggling of illegal drugs, without at the same time securing the tactical communications of our enforcement agents against electronic snooping by the criminals. There are in the bill before us some $678 million for drug interdiction efforts. In the area addressed by this amendment—secure voice communications equipment—there is included $20 million for the Customs Service and $20 million for the Coast Guard. I have talked with these agencies and looked at their needs, and I believe that these funds are needed by them. I do not propose to touch this money.

What I am proposing is a very modest increase in the total amount in the bill—a total increase of only $9 million—to take care of the needs expressed in this area by two other of our Federal law enforcement agencies, the FBI and the Secret Service.

The FBI has made significant progress in this area in the past few years, but I have been working with them, and their shortfall for fiscal year 1987 is some $4 million. This amendment would authorize those funds that they have been telling me they need for this purpose, and which I have confirmed with them only this week.

The Secret Service, too, has a gap in this area. You may ask, why Secret Service? Why on a drug bill? In addition to their well-known duties of protecting the President and other high officials, the Secret Service is charged with enforcing our laws against counterfeiting and credit-card fraud. As you might imagine, there is a tremendous overlap between people who commit one of these crimes, and those who engage in the illegal drug traffic. In discussing this problem with the Secret Service, I was told that two of the biggest counterfeiting cases they have had recently involved drug smugglers in Miami and Colombia. So if we are going to have a comprehensive approach to the drug problem in this country, we should make it truly comprehensive. We should include the necessary funding to give protection to the communications of both FBI and Secret Service.

The second section of my amendment provides an earmarking of funds for the Drug Enforcement Administration in this area. When DEA submitted its budget for fiscal year 1987, OMB had already taken a cut of $7 million in the area of secure voice radios. This bill as a whole provides a

net increase for DEA of about $27 million. I believe that we ought to earmark $7 million of that total increase to provide the funding that DEA determined it needed in this area. I realize that FBI and DEA have been working together to coordinate their secure radios so that they can share the same networks, and that a study of this situation has been going on for over a year. I am told by these agencies that the study is almost complete, and that they can use the additional funds in this area in this year. I believe we ought to provide it to them.

Compared with the total amount in this bill, the funds required to close this gap in the armor of Federal law enforcement officials are relatively small, and it is a one-time expense. As I said earlier, the amount added to the $678 million total by this amendment is only $9 million. This is a modest amount, I submit to you, to stop criminals from being able to eavesdrop on the FBI, DEA, and Secret Service.

I urge your support of this amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. CHILES. Mr. President, the amendment has certainly been cleared on our side and we support it. I understand Senator THURMOND is speaking for the majority side and supports it.

Mr. BENTSEN. Mr. President, I move adoption of the amendment.

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

The amendment (No. 3039) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3040

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. ABDNOR], for himself and Mr. DECONCINI, proposes an amendment numbered 3040.

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

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

The amendment is as follows:

At the appropriate place in the bill insert the following:

(a) Recruitment and training of volunteers for the U.S. Customs Service.

The Commissioner of Customs, acting under the direction of the Secretary of the Treasury (hereinafter referred to as "the Commissioner") is authorized to recruit, train, and accept without regard to the civil service classification laws, rules, or regulations the services of individuals without compensation as volunteers to aid the U.S. Customs Service in the performance of its responsibilities. In accepting such services of individuals or volunteers, the Commissioner shall not permit the use of volunteers in policymaking processes, or to displace any employee. The Commissioner shall not permit the use of volunteers in hazardous duty or law enforcement work unless the Commissioner determines that they are skilled in performing such hazardous activities or are trained in law enforcement work.

(b) Establishment of U.S. Customs Reserve.

The U.S. Customs Reserve (hereinafter "Reserve") is an organization of volunteers administered by the Commissioner of Customs under the direction of the Secretary.

(c) Purpose.

The purpose of the Reserve is to assist the U.S. Customs Service:

(a) to foster a wider knowledge of, and better compliance with, the laws, rules, and regulations enforced or administered by the U.S. Customs Service; and

(b) to facilitate the operations of the U.S. Customs Service

(d) Eligibility, enrollments and disenrollment.

The Reserve shall be composed of citizens of the United States and its territories and possessions, who by reason of their interests, special training or experience are deemed by the Commissioner to be qualified for duty in the Reserve and who may be enrolled therein pursuant to applicable regulations. Members of the Reserve may be disenrolled pursuant to applicable regulations.

(e) Membership in other organizations.

Membership in the Reserve shall not be a bar to membership in or employment in any civilian or military organization of the U.S. Government.

(f) Use of volunteers facilities.

The Customs Service may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any property placed at its disposition for any of such purposes by any individual, corporation, partnership, or association, or by any State or political subdivision thereof.

(g) Vessel, vehicle, or aircraft deemed public vessel or public aircraft.

Any vessel, vehicle or aircraft while assigned to authorized Customs Service duty shall be deemed to be a public vessel, public vehicle or public aircraft of the United States, and shall be deemed to be a vessel, vehicle or aircraft of the Customs Service, but shall not be counted against any limits expressed in authorization acts.

(h) Availability of appropriations.

Appropriations of the Customs Service shall be available for the payment of incidental expenses, such as uniforms and necessary traveling expense and subsistence, or per diem in lieu of subsistence, of volunteers and members of the Reserve assigned to authorized specific duties and for actual necessary expenses of operation of any vessel, vehicle, aircraft, or radio station or other special equipment when assigned to Customs Service duty, but shall not be available for the payment of compensation for personal services, incident to such operation. The term "actual necessary expenses of operation," as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair of equipment, repair of any damaged vessel, vehicle, aircraft, or radio station where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, of such vessel, aircraft, or radio station rests with the Customs Service.

(i) Assignment and performance of duties.

No volunteer or member of the Reserve solely by reason of such volunteer status or membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Customs Service except that any such member may, under applicable regulations, be assigned specific duties, which after appropriate training and examination, he has been found competent to perform, to effectuate the missions of the Customs Service. No volunteer or member of the Reserve shall be placed in charge of a vessel, vehicle, aircraft, or radio station assigned to Customs duty unless he has been specifically designated by authority of the Commissioner or his designee to perform such duty. Volunteers and Members of the Reserve, when assigned to specific duties as herein authorized shall, unless otherwise limited by the Commissioner, be vested with the same power and authority, in the execution of such duties, as members of the regular Customs Service assigned to similar duty. When any volunteer or member of the Reserve is assigned to such duty he may, pursuant to regulations issued by the Secretary, be paid actual necessary traveling expenses, including a per diem allowance in conformity with standardized Government travel regulations in lieu of subsistence, while traveling and while on duty away from his home. No per diem shall be paid for any period during which quarters and subsistence in kind are furnished by the Government.

(j) Federal employee status for volunteers—

(1) Employment status of volunteers. Except as otherwise provided in this section, a volunteer or member of the Reserve shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) Tort claims and litigation. For the purpose of the tort claim provisions of title 28 of the United States Code, and litigation against individuals when performing official business, a volunteer under this Act and a member of the Reserve on duty shall be considered a Federal employee and entitled to official representation by the Department of Justice.

(3) Civil employees. For the purposes of subchapter I of chapter 81 of title 5 of the United States Code relating to compensation to Federal employees for work injuries, volunteers and members of the Reserve when performing authorized activities under this Act shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply. When any volunteer or member of the Reserve is physically injured or dies as a result of physical injury incurred while performing any specific duty to which he has been assigned by competent Customs authority, such member or his beneficiary shall be the performance of a specific duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the

permanent residence of a volunteer or member of the Reserve.

(4) A volunteer shall be considered an employee of the Customs Service for purposes of—

(A) section 552a of title 5 (relating to disclosure of information);

(B) section 1905 of title 18 (relating to confidential business and trade secrets);

(C) any other law governing access to records;

except that such information shall be made available to volunteers only to the extent that the Commissioner determines that the duties assigned to such volunteers so require.

Mr. ABDNOR. Mr. President, the amendment I am offering is a noncontroversial one. Simply put this provision would authorize Customs, under the direction of the Department of the Treasury to accept volunteer services. The Park Service, Forest Service, Coast Guard, and the Air Force all have volunteer service statutes similar to this provision.

Mr. President, the respective auxiliaries provide a service that is matched by none. They assist each of these agencies by performing many valuable tasks. Under this amendment volunteer services would be accepted to assist Customs employees, for example, by providing translation services, answering hot line telephones, operating nonessential radio services, cleaning and maintaining official vehicles and vessels, conducing low risk surveillance similar to what the Civil Air Patrol presently performs for Customs, and other such tasks.

Mr. President, this would be particularly valuable in that it would free Customs officers to concentrate on enforcement activities, inspections and the clearance of merchandise. In addition it would allow Customs to train and recruit a group of individuals who would be available to assist Customs in performing its responsibilities during emergencies.

Mr. President, I hope that my colleagues agree with me that adoption of this amendment will provide invaluable assistance to the Customs Services as it carries out its duties.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. THURMOND. Mr. President, we think the amendment will be helpful. We will accept it.

Mr. CHILES. Mr. President, the amendment has been cleared on our side.

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

The amendment (No. 3040) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3041

(Purpose: To strengthen penalties for individuals, over the age of 18, who knowingly and intentionally sell a controlled substance to a pregnant woman)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mrs. HAWKINS] proposes an amendment numbered 3041.

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

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

The amendment is as follows:

Section 1102 is amended by amending the proposed section 405B of the Controlled Substances Act by adding at the end thereof the following subsection:

"(f) except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

Mrs. HAWKINS. Mr. President, I would like to quote to you from a tragic story in Newsweek about a growing problem in our Nation.

Guillermo, a newborn at Broward General Medical Center in Fort Lauderdale, has spent his whole short life crying. He is jittery and goes into spasms when he is touched. His eyes don't focus. He can't stick out his tongue, or suck. Born a week ago to a cocaine addict, Guillermo is described by his doctors as an addict himself. Nearby, a baby named Paul lies motionless in an incubator, feeding tubes riddling his tiny body. He needs a respirator to breathe and a daily spinal tap to relieve fluid buildup on his brain. Only one month old, he has already suffered two strokes.

Guillermo and Paul are two heirs of America's deadly romance with cocaine.

This searing narrative tells of a horrible new phenomenon that has swept across not only my State of Florida but across our Nation * * * cocaine babies. Children, born to addicted parents, who are themselves addicts.

Infants of mothers who use drugs are often underweight. They suffer the same withdrawal symptoms as adults—seizures and convulsions. They are jittery, irritable and hyperactive. There may be developmental delays and mental retardation. Many children wind up with learning disabilities.

And in some instances, children have been so damaged by drug exposure that they are unwanted by their real parents or prospective adoptive parents, as I witnessed last week when I visited one of these clinics. This means, of course, that the affected youngsters linger in public custody.

Mr. President, to me this is the most catastrophic form of child abuse imaginable. Placing at risk the life and well-being of a child who may never experience the breadth of opportunities that might otherwise have been enjoyed. To distribute cocaine to an obviously pregnant woman is the most heinous of crimes. Once again, the insensitivity and greed of the drug mafia, the purveyors of human misery, have claimed innocent victims.

Mr. President, my amendment is simple. My amendment would revise the juvenile drug trafficking provisions of this omnibus drug legislation. It would add a new paragraph stressing strict penalties for any individual who knowingly or intentionally provides or distributes a controlled substance to any pregnant individual.

It is essential that this amendment be considered as part of the bipartisan drug package. We must guarantee that the strictest penalties are placed upon those who would sell drugs to a pregnant woman, all the while knowing of the long-term negative ramifications upon the unborn infant and upon our society as a whole.

Mr. President, I know of no objection to this amendment.

Mr. BIDEN. Mr. President, I did not hear the last statement of the Senator from Florida.

Mrs. HAWKINS. I know of no objection to this amendment.

Mr. BIDEN. Mr. President, I would like to ask a question, if I may, I would like to ask my colleague from Florida if this amendment requires an enhanced penalty for someone who sells cocaine to a pregnant woman. Is that correct?

Mrs. HAWKINS. Any drug.

Mr. BIDEN. Any drug at all?

Mrs. HAWKINS. Yes.

Mr. BIDEN. Any drug covered in the act?

Mrs. HAWKINS. Yes. Section 405B.

Mr. BIDEN. Can the Senator tell us whether or not there is a requirement of knowledge that the woman is pregnant? How would the person selling know whether or not the woman was pregnant?

Mrs. HAWKINS. I guess they would ask first, if it is not obvious by looking.

Mr. BIDEN. Are you serious? You would ask and say, "Are you pregnant?" If the woman says she is not pregnant——

Mrs. HAWKINS. My young daughter was just treated by a dermatologist and he said, "Are you pregnant?" And she said, "No." He said, "Have you any desire to become pregnant soon?" And she said, "No."

He said that she could not use that drug for him to operate on her skin if

she were pregnant or going to be pregnant.

□ 1640

I believe the standard is reasonable knowledge.

Mr. BIDEN. I am not sure—I do not know of any standard in law—I am unaware of any criminal standard called "reasonable knowledge." I am a little concerned as to what this means.

For example, I am anxious to see to it that anyone who sells drugs at all goes to prison; second, that anyone who sells drugs to a pregnant woman knowing that woman was pregnant should have an enhanced penalty. What I am trying to find out here is whether or not the explanation the Senator just gave me, which is that the drug dealer should ask, "Are you pregnant" and the women looks at him and says "No, I am not pregnant"—is that sufficient defense in court that in fact he did not sell to a pregnant woman, even though she might actually be pregnant?

Mrs. HAWKINS. As I understand it, knowingly and intentionally is a standard of proof for a prosecutor. So no one should be nervous about being unfair to a drug pusher——

Mr. BIDEN. I am not nervous about being unfair to a drug pusher. I am nervous, if I am nervous about anything, about the legal standard.

Mrs. HAWKINS. Let us let the drug traffickers assume the risk.

Mr. BIDEN. I understand that the Senator can be flippant about that.

Mrs. HAWKINS. I am not being flippant, Mr. President. I have been in that clinic for many hours. I am not flippant. I suggest any Senator, if they have any squeamishness about this at all, visit one of these clinics that are filled with these babies.

Mr. BIDEN. Mr. President, I say to my colleague I have no squeamishness about that; I have no squeamishness about dealing with this issue. I do have a squeamishness about not knowing what the law is. That is my squeamishness. What I am trying to find out here is whether or not there is a requirement of knowledge. Every other crime, or at least felony, requires knowledge. I am not talking about who held what babies, or how many babies who has held. I am trying to find out whether or not there is a requirement of knowledge. The Senator tells me that there is a requirement of knowledge, is that correct?

Mrs. HAWKINS. Intentionally, yes. I believe we find this standard in other parts of this bill where a landlord cannot rent to a tenant knowingly or intentionally, knowing that the apartment would be used for drug trafficking. This is a copy of my amendment with that standard.

Mr. BIDEN. Mr. President, I now have a copy of the amendment. It says:

"(f) except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title.

I am still confused as to whether or not the Senator believes, under this amendment, that it requires an affirmative question on the part of the drug dealer of the pregnant person and if in fact the pregnant person responds, "No, I am not," whether or not we are going to allow, that that will allow in fact as the Senator has explained, that the drug dealer can get off. The Senator has just established, as I understand it, in our little discussion here that if, if fact, the pregnant woman says, "No, I am not pregnant," that is a defense.

Mrs. HAWKINS. It is up to the prosecutor, as I understand it, to prove that.

Mr. BIDEN. Mr. President, I am willing to accept the amendment notwithstanding that.

Mr. METZENBAUM. Mr. President, I am not willing to accept the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. I say to the distinguished Senator from Florida it is very simple when we are dealing with a drug bill to want to accept everything, throw the book at the drug users or dealers. But that does not mean we ought to make bad law. The Senator from Florida said something that almost proved the point, I say to the Senator from Florida. She said that if the drug dealer asks whether the woman is pregnant and she says no, then it would be up to the prosecutor to prove that he had knowledge. It would be up to the prosecutor. I do not quite understand that.

As bad as drug dealers are, I did not think we were out here today to see if we can just change all the rules of the Constitution and the law and the rights of people. I am assuming the drug dealer—whom I do not know. I do not know one drug dealer from another one. I am assuming that he or she is entitled to the same equal consideration and rights under the law that all of us have.

This whole idea that here is an amendment, there is an amendment, another amendment, saying that the drug dealer who sells to the pregnant woman, thinking that the woman is not pregnant, being told by her that she is not pregnant, does he have to do some kind of a test—I do not know what all the tests are that are being used in this day and age, but some kind of test to see whether she is pregnant?

It seems to me that what we are doing is taking a bill that a lot of people have worked very hard on. I cannot claim to be one of them because I was not a party to those negotiations. Though someone on my staff may have been, I was not. Now it seems what we are trying to do is, let us find a few amendments that will really stick it to them, make it so difficult that some people will have difficulty voting for it. Or maybe we will prove to ourselves how great we are at trying to have strong laws against drug dealers.

There are 100 Members of the U.S. Senate. One hundred Members of the U.S. Senate want to have a strong antidrug law. But that does not mean that every single idea that comes down the pike has to be added to this bill. To the Senator handling the bill on that side of the aisle, I must confess that I am somewhat concerned that this is the first of a series of amendments that are going to make it possible for the bill to be defeated.

We may be able to chortle about what a great job we did in getting an amendment passed or two amendments passed or three. If we do not get the bill passed, or if we do get it passed and it is a bad bill, I do not think that is anything to make anybody proud.

Mrs. HAWKINS. Mr. President, let me respond by saying that subtitle C in the RECORD of September 25, 1986, page S13651, subtitle C of the Juvenile Drug Trafficking Act of 1986, says:

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"Employment or Use of Persons under 21 Years of Age in Drug Operations."

We have already accepted that.

"Section 405B(a) 'Except as authorized by this title' it shall be unlawful for any person at least eighteen years of age to knowingly and intentionally"—

then it has several different subtitles——

(1) employ, hire, use, pursuade, induce, entice, or coerce, a person under twenty-one years of age to violate—

so do we have to have a card? If we keep that section of it, you have to have a card, how old are you? You would have to have a false ID.

It is to this whole title called Juvenile Drug Trafficking Act of 1986 we add section (f) by this amendment.

I hope all 100 Senators are reading this entire bill, probably the most important legislation that parents are following in the United States of America today. If any of the national news journals are an indicator of what they think we should be about, this is it, protecting children, especially the unborn.

We are adding section (f) under this Juvenile Drug Trafficking Act of 1986, using all the reasonable standards of proof as were used for employment and other areas, stating that anyone that knowingly or intentionally distributes any controlled substance to a

pregnant individual—I would say it is easier to tell if somebody is pregnant than if they were 21.

(Mr. MATTINGLY assumed the chair.)

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

Mrs. HAWKINS. Yes.

Mr. WILSON. I believe I just heard the Senator from Florida state that there is a requirement for knowledge on the part of the accused in this instance. Is that correct? There is a requirement for knowledge?

Mrs. HAWKINS. Yes, reasonable knowledge.

Mr. WILSON. Mr. President, it seems to me that this is not any deviation constitutionally from the norm in criminal law, where knowledge is required and the establishment of knowledge on the part of the accused is one of the burdens of the prosecution.

Mr. BIDEN. Will the Senator from California yield for a question?

Mr. WILSON. Certainly, Mr. President.

Mr. BIDEN. I share his view. My confusion was in the explanation of the Senator from Florida.

□ 1650

I now have the amendment. The amendment is constitutional. The amendment does not say reasonable knowledge. That is what confused me and I suspect may confuse the Senator from Ohio. It says knowingly and intentionally. That is a criminal standard we all know. What threw me off, and the reason why I raise it—I did not have the amendment in my hand at the time, but when the Senator said that you would ask someone whether or not they were pregnant, or used an example of employment, those are totally different standards. They have nothing to do with the criminal standard. The Senator from Florida has an amendment, though, that on its face does meet the scienter requirement of the criminal law. I just want the legislative history to show that the notion that a defendant would be able to plead as a defense in court that he asked the person to whom he sold the drugs if they were pregnant and the person who purchased the drugs said, "No, I'm not," that would not be necessarily a defense. That is the first thing I want to make clear. I would hate to have that stay in the legislative history.

The second point that I wish to make is that reasonable knowledge is not a term of art in the criminal law. It is knowingly and intentionally. A reasonable man standard is a standard that is in civil law. We have a higher standard in the criminal law. The Senator from California accurately and precisely points that out. The amendment points it out.

I hope that clears up the legislative history on this because it would be awful if we passed this bill and because of the comments made about reasonable knowledge, this would be in effect declared unconstitutional further down the road. But on its face this legislation says, and I quote, "any person who knowingly and intentionally provides." And that is the criminal standard which exists throughout this legislation. I suggest that we accept the amendment.

Mr. WILSON addressed the Chair.

Mr. BIDEN. I thank my friend from California.

Mr. WILSON. Mr. President, I am glad to have heard the Senator from Delaware express acceptance of what I think is a very good addition to the criminal law. I think that it is clearly established that the standard of proof that is required here is the customary standard. What the Senator from Florida is addressing is a peculiar problem, one with which we have only recently become acquainted, and that is that there is a new victim, a victim particularly defenseless against the trafficker, one who is the victim of his or her own mother's habit.

I think that a special penalty should be involved to protect those who are especially defenseless. I think that perhaps more time has been taken than is necessary to establish what is an obvious and customary standard, but I think that what we should be doing is to give the kind of notice that this statute will give to those who would, without regard for the incredible suffering that they would inflict upon a child in the womb and shortly thereafter exposed to the rigors of life without the kind of support system that a healthy child would have, we should give notice that those people are going to especially pay for their crime. So I would expect and hope that both sides would with some alacrity accept this provision. It is needed.

I commend the Senator from Florida for her effort.

Mrs. HAWKINS. Mr. President, there is a phenomenon that is occurring in this country.

In our Nation's hospitals, there are babies being born to mothers who have used illicit drugs during pregnancy. These infants are more likely to be premature and underweight. Some suffer problems ranging from strokes, to heart attacks, to loss of the sucking reflex. Many will experience learning disabilities or cerebral palsy. And some will be born experiencing all of the symptoms of withdrawal—including seizures and convulsions, hyperreflexia and vomiting. All through no fault of their own.

The problem is new, but it is already having a significant impact on our country. Recent testimony before Congress revealed a five-fold increase in the number of damaged or addicted babies born to subtance abusing mothers. Today in New York, 8 out of every 1,000 babies bear the scars of a substance abusing parent. And at Broward General Medical Center's neonatal unit, the largest in Florida, an average of about 20 percent of the newborns being treated were the victims of substance abusing mothers. Saving the life of one of these babies can cost as much as $135,000. And taxpayers in Florida, New York, and around the country will pay for decades for these children who risk developing long-term illnesses.

Mr. President, it is my understanding that about 5 percent—or about $22 million—of the new authorization for the alcohol, drug, and mental services block grant will be reserved for high-risk youth.

Mr. President, may I address a question to my distinguished colleague from Utah, Mr. HATCH, the chairman of the Senate Committee on Labor and Human Resources and the task force on the education, prevention and treatment provisions of this bill.

The identified child of a substance abuser is considered a "high-risk youth." Am I correct in understanding that this would include a baby who is born addicted. Would this child qualify for rehabilitative services under the current provisions of the new and old ADMS treatment programs?

Mr. HATCH. Yes, under the language of this legislation, high-risk youth are targeted for treatment, rehabilitation, and prevention programs and would include children of substance abusers. I commend Senator HAWKINS for bringing this issue to the attention of the Congress and applaud her dedication to help those very unknowing victims of children born to substance abusers.

Mrs. HAWKINS. Thank you for clarifying this issue for me.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I think the amendment is in good shape, and I am very pleased the distinguished Senator from Delaware agreed that the wording is correct. It is in the usual form in laws of this kind and I hope he will see fit to accept it.

Mr. METZENBAUM. I have no objection. As the Senator from Delaware has indicated, the language is far stronger than was the other, because the language clarifies that it has to be knowingly or intentionally making the sale. That is totally different than reasonably should have known. And under those circumstances I have no difficulty with the amendment.

Mr. BIDEN. The minority is prepared to accept the amendment.

Mr. THURMOND. Mr. President, the majority is prepared to accept the

amendment. We think it is a good amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3041) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. WEICKER. Mr. President, I ask unanimous consent that the call for the quorum be dispensed with.

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

Mr. BIDEN. Reserving the right to object——

Mr. WEICKER. First, Mr. President, I move to reconsider the vote on the amendment just passed.

Mrs. HAWKINS. I move to lay that motion on the table.

Mr. WEICKER. Secondly, I assume we are here to work on the bill.

The PRESIDING OFFICER. Will the Senator please suspend.

Did the Senator from Delaware object to the calling of the quorum?

Mr. BIDEN. The Senator from Delaware does not object on calling of the quorum for the purpose——

The PRESIDING OFFICER. Then the quorum call will be rescinded.

The Senator from Connecticut is recognized.

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

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

The motion to lay on the table was agreed to.

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

Mr. WEICKER. Might I ask the distinguished Senator before he pursues his request.

The PRESIDING OFFICER. Is there objection?

Does the Senator withhold his request?

Mr. BIDEN. I object to withdrawing of the quorum call.

The PRESIDING OFFICER (Mr. WILSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1700

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

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

AMENDMENT NO. 3042

(Purpose: To require the Alcohol, Drug Abuse, and Mental Health Administration to include as a top priority research on neuronal receptors)

Mr. WEICKER. Mr. President, on behalf of myself, Mr. HATCH, and Mrs. HAWKINS, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. WEICKER], for himself, Mr. HATCH, and Mrs. HAWKINS, proposes an amendment numbered 3042.

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

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

The amendment is as follows:

At the end of subtitle A of title IV, add the following:

SEC. 4017. PRIORITY RESEARCH.

The Alcohol, Drug Abuse, and Mental Health Administration shall include as a top priority research on neuronal receptors.

Mr. WEICKER. Mr. President, much will be said during the course of the debate about affecting the drug problem through additional law enforcement and harsher punishments. The fact remains that I firmly believe the three most important areas are, No. 1, education with respect to the young; No. 2, scientific research as to the problem of addiction; No. 3, the matter of rehabilitation.

The amendment that the Senate has before it now addresses the area of scientific research, and I think it is rather dramatic insofar as its subject matter is concerned. The amendment urges the Alcohol, Drug Abuse, and Mental Health Administration to pursue research on neuronal receptors.

Rather than do a bad job as a layman in describing the subject matter, I will read a letter addressed to me by Dr. Donald Ian Macdonald, the Administrator of the Alchol, Drug Abuse, and Mental Health Administration.

I hope Senators will be patient with me, because I think they will understand, on the basis of what is said here, No. 1, the complexity of this drug problem and, No. 2, how it eventually will be resolved. The letter reads:

DEAR MR. CHAIRMAN: It was a pleasure meeting with you yesterday. As we discussed, research into the neurobiological bases of drug abuse has been both a stimulus to and beneficiary of recent advances in the understanding of the brain and behavior. I appreciate your interest and would like to take this opportunity to elaborate further on this subject and its critical significance in addressing the drug abuse crisis both in the United States and abroad.

The brain is composed of billions of individual nerve cells. These nerve cells come in a variety of specialized forms and are arranged in distinct functional units. The functions of these nerve cells depend on: (1) their location in the brain, (2) their degree of specialization, (3) the kinds of substances they ordinarily use to communicate with each other, (4) the manner in which they are grouped together in bundles (nuclei), and (5) how they are wired together (nerve tracts). For example, your eye is made up of specialized nerve cells that are particularly responsive to light. The visual information received by the eye is sent to other parts of the brain composed of nerve cells dedicated to receiving and processing information about the world around us. A similar description can be made for the other special sensory organs (ear, nose, tongue, etc.) that tell us about our immediate environment. But whatever their specialized (or general) nature, the characteristic that these nerve cells have in common is their capacity for transmitting "information" in the form of electrical energy—called a nerve pulse—from one cell to another.

Moving from the "geography" of nerve cells, e.g. how they are grouped or wired together, to the cellular level, we see that nerve cells are separated from one another by a small space called a synapse. A nerve impulse must cross this gap to create a "closed circuit" if the brain is to perform any of its multitudinous functions. This "circuit closing" or bridging function is performed by chemical substances produced by the brain that are called neurotransmitters. These substances are released from the end terminals of a message-sending (presynaptic) cell, cross over the synaptic gap, and make contact with the message-receiving (postsynaptic) cell which is next in line along the pathway. This physical activity which takes only the minutest fraction of a second to complete (and is occurring in millions of cells simultaneously) is responsible for the most complex human thought processes and the most elemental human behaviors.

How is the message from one nerve cell to another actually received at the molecular level where the substances released by the presynaptic cell interact with the postsynaptic cell? It is made possible by specialized structures on the postsynaptic cell, called receptors. These receptors are activated by specific neurotransmitters which generate a new nerve impulse in a postsynaptic cell to which they are connected. (This is analogous to a key being able to open a specific lock if the fit is "just right.") In order for the nerve impulse to be turned off (so that the specific activity engendered by the nerve impulse does not continue on indefinitely) the neurotransmitters are almost immediately inactivated by a variety of mechanisms shortly after they have created the circuit which delivers the "message."

Abused drugs and alcohol exert their deleterious influence on brain function by interfering with a number of the mechanisms described above. They interfere with: (1) The transmission of the nerve pulse within an individual cell, (2) the release of neurotransmitters, (3) the inactivation of neurotransmitters, and (4) the receptor themselves. It is precisely these processes that scientists are studying when performing research on drug effects on the brain through highly sophisticated methodologies and creative techniques. Unfortunately, it is both figuratively and literally true that when people abuse drugs they are performing "experiments" on themselves to alter their brain function (with unforseeable consequences). The results are sometimes merely unpleasant, and not infrequently disastrous.

With this as background, I would like to discuss recent discoveries with direct relevance to the problems of heroin and cocaine addiction.

In the early 1970s it was generally assumed that opiate drugs, such as heroin, must act on the nervous system through specific receptors in nerve cells. At that

time a search was undertaken for these receptors, and in 1973 several groups of scientists discovered the "opiate receptor." All drugs have specific chemical shapes or configurations. The opiate receptor is specialized to be activated by only one class of drugs. Going back to the analogy used earlier, if you view drugs as keys and receptors as locks, then the opiate receptor (lock) will only allow opiate drugs (keys) to fit the slot. This discovery immediately explained another phenomenon that scientists had observed for some time; that there were drugs called opiate antagonists that actually blocked the effects of heroin. It was very clear that while all opiate-like drugs might fit the slot, not all had the exact configuration to turn the key (and activate the cell). Some drugs (i.e. the antagonists) while occupying the slot, permitted no other keys, such as heroin, to have access to the lock. This concept opened up whole new avenues of research into the development of drugs with specific abilities to block, antagonize, or minimize undesirable effects of opiate drugs.

With the discovery of the opiate receptor, scientists theorized that the brain must contain some internally produced, opiate-like chemicals to activate it. It did not seem reasonable that the evolutionary process had created a special cell in the brain that was responsive only to substances which are found in nature in certain limited areas of the globe (i.e. the poppy plant). Indeed, in the mid-seventies a whole variety of endogenous (the scientific term for chemicals made by the body) opiate-like substances called enkephalins, were discovered. This finding, as well as the discovery of the opiate receptor, was made entirely by ADAMHA supported scientists.

□ 1710

That is ADAMHA. That is our unit, our governmental unit, if you will, the Alcohol, Drug Abuse and Mental Health Administration, of which Dr. Macdonald is the head.

As is so often the case in basic research and knowledge development, the discovery of endogenous opiate-like drugs had implications for a wide variety of other biomedical areas. Essentially every research program at the NIH is now supporting research in this and related areas. The possible benefits of this research include the treatment of high blood pressure, stroke, obesity, and pulmonary disease.

Current drug abuse research is also aimed at attempting to understand the genetic mechanisms which control and regulate opiate receptors and endogenous opiate-like substances. One hypothesis being investigated is that some people may be particularly vulnerable to opiate addiction because of an abnormality in their endogenous opiate system. For example, it is thought that the opiate system may play a role in mood regulation. Some people may not secrete enough enkephalins (one of the endogenous opiate-like substances referred to above) to feel "normal", and they may be particularly at risk of becoming addicted if they are exposed to outside (exogenous) opiates like heroin. In a sense, some addicts may be conceptualized as having an enkephalin deficiency syndrome in a similar way to which a diabetic suffers from inadequate insulin availability. I must emphasize that this is only a hypothesis and in any case would not explain all of heroin addiction.

While the problem with heroin has been with us for far too long, the recent epidemic of cocaine use has caused us to refocus attention on this drug. While some research is being directed at identifying a "cocaine" receptor this may not prove fruitful. We do, however, have a reasonable, if incomplete, idea about how cocaine works. As mentioned above, nerve cells communicate through the release of neurotransmitters. After performing their function the neurotransmitters are inactivated. One way in which this occurs is through a process of "reabsorption" of the neurotransmitter by the same nerve cell that released it. Cocaine is a "reuptake blocker" in that it prevents this process of reabsorption and causes the neurotransmitters to remain in the synapse with constant activation of the next nerve cell in the chain. Moreover, this effect of cocaine occurs at a place in the brain that appears to play a major role in modulating feelings of well-being as well as intense craving for the drug. This intense craving can occur in the absence of physical dependence on the drug. In fact, recent studies have shown that two distinct sites in the brain can be identified, one controlling physical dependence on drugs, and another controlling drug-seeking behavior.

Knowledge of cocaine's actions has led us to explore a number of ways of treating cocaine abuse. These have focussed on ways to counteract cocaine's effect on neutrotransmitters and to replace deficiencies in neurotransmitters that can occur after chronic cocaine exposure. Some of these approaches appear to hold reasonable promise of success.

Of course, this brief summary can only touch upon the advances made in the neurosciences as they relate to drug abuse. I anticipate major expansions of knowledge and understanding in the very near future. Our research program will focus on developing new prevention and treatment approaches based on fundamental knowledge of brain mechanisms. For example, we are seeking to develop narcotic antagonists that will block the effects of opiate drugs for prolonged periods of time and we are developing new approaches to diminishing the intense craving and drug seeking behavior that is a part of drug addiction. As we understand more and more about the biochemical nature of the brain and the relationship between the structure of brain chemicals and behavior, we will have profound capabilities for altering human capabilities and experience. We will, in the very real sense of the word, begin to understand the essence of what we are.

That is what this amendment is about, scientific research, not coming after the fact in terms of punishment or during the fact in terms of law enforcement, but indeed to the best of our scientific abilities see that there is no problem to begin with or at least see that the problem is caught at its earliest stages. There is nothing very dramatic about this. It really makes us think rather than appreciate the violence of either the problem of the solution. In the long term, the subject matter of this amendment is by far and away probably one of most important matters which we will include in this legislation this evening.

I move adoption of the amendment.

□ 1720

Mr. WEICKER. Mr. President, one last comment. There are no additional funds that are requested in this amendment, although there obviously are additional funds contained in the authorization bill itself.

But what I wanted to do was to set the stage as to what I intend to do next year when it comes to appropriations time. At appropriations time, I intend to follow through on this type of authorization language seeking additional funds for research in the matter of such things as neuronal receptors. What I am trying to do is build a public knowledge in a direction which I feel will have a salutory effect on the problem that we all face.

Mr. CHILES. Mr. President, we concur in the amendment on this side and feel that it is a good amendment and urge its adoption.

Mr. BIDEN. Mr. President, I wish to compliment the Senator from Connecticut. I think this is an excellent amendment and focuses research on new ways of solving drug abuse. Because, as was stated by the Senator when he first spoke on this bill before we even brought the bill to the floor, when he agreed to waive his rights to debate whether or not we were going to bring up this bill, he spoke with some eloquence. And I hope the staffs and my colleagues will go back and dig out what he said, that unless we get to the point of dealing with, as our friend from New York, Senator MOYNIHAN, has said, the pharmacology of this issue, we are not going to get to the question of whether or not we are going to be able to do much at all.

Any well-coordinated strategy on this issue requires an emphasis on new treatment approaches. I think the Senator from Connecticut knows a great deal about this area and makes a very significant contribution here because, as I say again, unless we find ways and focus research and attention on ways to deal with solving the drug abuse problem, all the courts, all the interception of interdiction, all the prosecution is not going to solve the problem.

I compliment my colleague from Connecticut.

Mr. WEICKER. I thank my distinguished colleague from Delaware for those very gracious remarks.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

MR. THURMOND. I believe we have expressed our approval of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Connecticut [Mr. WEICKER].

The amendment (No. 3042) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3043

(Purpose: To provide funds for programs which identify the needs of drug-dependent offenders)

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

The PRESIDING OFFICER. The clerk will report.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, I ask for immediate consideration of the amendment that I have sent to the desk.

The PRESIDING OFFICER. The clerk will report.

The Senator from Delaware [Mr. BIDEN], for Mr. KENNEDY proposes an amendment numbered 3043.

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

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

The amendment reads as follows:

Section 1552(a)(3) of the bill is amended by amending proposed section 1302 of part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 by—

(1) striking "and" at the end of clause (5);

(2) striking the period at the end of clause (6) and inserting ", and"; and

(3) adding at the end thereof the following:

"(7) provide grants for programs which identify and meet the needs of drug-dependent offenders for treatment as provided in section 403(a)(8).".

● Mr. KENNEDY. Mr. President, one of the key components of an effective antidrug program is treatment of drug abusers.

My amendment would authorize grants to State and local governments to fund the Treatment Alternatives to Street Crime [TASC] Program, which provides treatment to drug-abusing offenders. The grants would be part of the drug law enforcement grant program created by the Anti Drug Abuse Act of 1986.

The TASC programs are currently funded by grants from the Bureau of Justice Assistance, but the Senate version of the State, Justice, Commerce appropriations bill contains no funding for Bureau of Justice Assistance grants. These vitally important programs will go unfunded if this amendment is not adopted.

The TASC Program was designed as a response to a rapidly increasing property crime rate caused, in significant part, by drug offenders. Pretrial, probation, and parole clients are placed in treatment programs under close supervision to prevent their return to illicit drug use and crime. As of 1983, over 52,000 drug-abusing offenders had participated in 72 TASC programs. Savings have been realized from the program due to decreased correctional, court, prosecutorial, and probation workloads. For example, of those successfully completing the program in one project, 91 percent had no subsequent arrests.

Although budget reductions have precluded comprehensive program evaluations since 1983, there is every indication that the TASC Program continues to be useful and effective. In 1986, Alabama, Alaska, Arizona, Delaware, Hawaii, Maryland, North Dakota, and Wisconsin used TASC as their primary Justice Assistance Act Program. There are currently 100 TASC programs in 18 States receiving $460,000 in Federal justice assistance funds.

It is essential, as part of our war against drugs, that we continue to fund these treatment programs. I urge my colleagues to adopt this amendment.●

Mr. BIDEN. Mr. President, by way of explanation here—and I thank you for your gracious patience while I fumble through my papers here. So many of my colleagues have come forth with amendments asking me to look at them and clear them that I lost the amendment in a pile of about 12 others that have been suggested.

Mr. President, I offer this amendment on behalf of Senator KENNEDY.

Mr. President, one of the key components of an effective antidrug program is the treatment of drug abusers. Senator KENNEDY's amendment would authorize grants to the State and local governments to fund what are called treatment alternatives to street crime, TASC. This program provides treatment for drug-abusing offenders. The grants would be part of the Drug Law Enforcement Grant Program created by the Antidrug Abuse Act of 1986.

The TASC Programs are currently funded by grants from the Bureau of Justice assistance, and the Senate version of the State, Justice, and Commerce appropriations bill contains no funding for the Bureau of Justice assistance grants. These vitally important programs will now go unfunded if this amendment is not adopted. The TASC Program was designed as a response to a rapidly increasing proper crime rate caused, in significant part, by drug offenders.

We all know why that is. The fact of the matter is that, unless you happen to be a multimillionaire or have access to a bank, if you have a drug habit, it is an expensive habit.

And there is no doubt in anyone's mind why there is so much street crime. Somewhere on the order of 50 percent of all the street crime in America is attributable to drug abuse. That is, when someone wants to go buy the cocaine or go buy the heroin or go buy the marijuana, they crack someone over the top of the head, take their wallet, take their purse, and half the time they are under the influence at the time.

I see my colleague from Arizona standing. I am happy to yield to him.

Mr. GOLDWATER. I was interested in what the Senator had to say about the cost of the dope habit. And I recall—I may be wrong—but I think I recall that England at one time sold narcotics at drugstores without prescriptions or anything else. I have often wondered—not facetiously—whether that might not be a cure in our country. They are going to kill themselves eventually. Let them do it cheap.

Mr. BIDEN. Well, you know, Mr. President, we sometimes smile about that, but the Senator from Arizona has raised a question that a number of very, very thoughtful and intelligent people have raised, and that is the argument has been underway for sometime in this country along the following lines: If, in fact, we not only have spawned a multibillion-dollar industry—over $110 billion a year in profits to illegal syndicates and individuals, not unlike the days of prohibition—in light of that fact and coupled with the fact that 50 percent of the crime on the street, violent crime, is attributable to a junky going out and forcibly wresting from a citizen their dollars and their cents and their money and in the process, many times, killing, maiming, or at least abusing them; and the fact that over 50 percent of the burglaries in America, the reason why people break and enter into homes is in order to pay for their drug habit—they steal your television, sell your television, and buy the heroin—they say, "Well, if that is the case, why don't we just legalize it?"

Now, it sounds funny, but look at it for a moment. If, in fact, drugs were legalized, that any heroin addict could walk into a clinic and get heroin, then the need to go out and mug my mother in the parking lot of the Acme is diminished, because they do not need the money in her purse. And also those major crime syndicates, which flourish and feed off society, would have their pocketbooks emptied very rapidly because people would not be paying for it. So it is not a crazy idea.

But I would say to my friend from Arizona, who is in fact one of the true civil libertarians in this country—and I mean that sincerely—the answer is

one that will not come to him as one that is unexpected and one that his philosophy, understandably, will find somewhat difficult. It is that big brother made a judgment that, in fact, we not only should protect those addicts and junkies who will kill themselves—the average age, for example, of a heroin addict, the life expectancy is about 28 years of age. They die by then not because they are shot by the police as they are jumping barriers, but because they overdose on heroin. They, in fact, kill themselves with the drug. And that is why the average life expectance of drug user is relatively low.

So we, as a society, have made the judgment, which I happend to subscribe to, that we should, in fact, protect our citizens even those who are inflicting this sin upon themselves.

□ 1730

The second reason is that as a people it seems to me, I say to my friend from Arizona, the Government of the United States should not knowingly condone something they have no doubt about the effect of the use of. In other words, even though we would diminish, I have no doubt, diminish crime, and we would diminish the size of the syndicates, it seems to me, I say to my friend from Arizona, we would be making such a statement about the morality of this country that it is something we could not live with, that if we as a country were to conclude that notwithstanding the fact we could reduce crime, the price at which we would reduce it would be to legalize something that is patently immoral on its face, and legalize something that in fact we know will result in the death of thousands and thousands of American. Although on balance the argument can be made we probably would have less crime, and we would have less of a pernicious impact on the part of organized crime, and we have as a society opted not to do that. As usual—and I am not being solicitious—my friend from Arizona not only has the insight to raise the tough questions, but has the courage to raise them.

Quite frankly, as my colleague from Arizona knows, most people would not even want to raise that question for fear that the political opposition would run around saying, "Charlie Smith is for heroin, and Charlie Smith is for such and such." We need more of that kind of input into this question. I compliment my colleague. I do not ask him to accept the answer other than to acknowledge that that is the reason why we have chosen not to go that route.

Mr. GOLDWATER. I am quitting politics. So I can accept the Senator's answer. He has satisfied me.

Mr. BIDEN. I say to my colleagues, and I say to the entire Nation that is all of our loss.

I sincerely wish the Senator from Arizona was not leaving this body. He keeps us all straight. As I said once before, I will say it again, I have been here 14 years. I have been in elective office 16 years. And the Senator from Arizona has more integrity in his little finger than most people I have met have in their whole body, and it is a loss to this body that he will be leaving.

I will yield to my colleague from Florida. Then I would like to at some point finish my statement.

Mr. CHILES. On the question of this amendment before us, I wanted to say to the Senator from Delaware we have had some of these demonstration projects in Florida. They have worked extremely well. In fact, I have heard about those demonstration projects from the law enforcement people who say that the idea of having the counselors come in to the jail and counsel addicts that are there has been extremely beneficial.

I think part of the package that we are dealing with here recognizes that we are going to increase penalties, and we are going to throw people into the slammer if they are involved in drugs. At the same time, I think we want to give them some help while they are there so that they do not just stay there for a period of time, learn different trades of how to go out and steal a little better to feed their drug habit, and go back in.

So I think treatment at the same time with the incarceration makes sense. It is working in those demonstration projects we have had in Florida. As I say, the law enforcement people themselves know that you have to have something like this. It is not enough just to put people off the streets for a while and warehouse them if you are not doing something to allow them to kick that habit.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I do not want to speak on the amendment.

I wanted to indicate that I have had a lot of inquiries from colleagues on both sides who understand there will not be any votes tonight. That is not the case. I hope we understand there are going to be votes, and what we are trying to do is avoiding those four or five blockbuster amendments. There may be other amendments that will require a vote but will not tie up this bill. As far as I know, there has been no agreement that there would not be any votes.

Mr. DECONCINI. Will the majority leader yield?

Mr. DOLE. We have some Members who do not want to miss any votes, and they would rather we would take up some of those legitimate amendments that require votes now so that when they leave they will miss fewer votes.

So I hope we can accommodate some of the other colleagues who have a conflict.

I am happy to yield.

Mr. DECONCINI. Mr. President, I am prepared to offer two amendments, one dealing with posse comitatus, and I am sure my colleague is interested in it. Another one deals with the pretrial diversion program. I have recently been advised that it will require a vote. I am ready to go whenever the managers want to go.

Mr. DOLE. I think we want to avoid those that we know are going to tie us up here, if we can. Let me list some: Drug testing, drug czar, death penalty, exclusionary rule.

Mr. DECONCINI. Mine are not those.

Mr. DOLE. That is right.

There is habeas corpus, and beyond that I think we ought to bring them up, shoot them up, or whatever.

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

Mr. GOLDWATER. Will the Senator yield? Will he give me an idea of how late we are going to be?

Mr. DOLE. I think about 9 o'clock.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, on two separate items, one in response to the Senator from Kansas. I think we can do exactly what he said. I know my Republican colleagues have a couple of amendments and may very well require rollcall votes. My Democratic colleagues do. We had a list of amendments that we believe are acceptable on both sides. There are a couple of those left. Then we have a tentative agreement, as I understand, that we just alternate back and forth with amendments. That is fine with the Senator from Delaware, the manager of the bill, and the Senator from Florida, Senator CHILES.

On another point and I can finish up this amendment if I may, and we can get on with those amendments, with regard to the TASC programs. The act is if I can follow up by the comment made by Senator CHILES from Florida, the experience in Delaware has been the same. We have had this program for the last 8 years. It is a good way to identify and provide immediate counseling.

One of the problems is we put these people in jail and we say we want to help them. Really we are helping ourselves. If we do not do something about it, unless we are ready to throw the key away and in some cases we are ready to throw the key away if we do not do something about putting these people in a better position and have a

shot of making it when they get out on the street drug free, then we are back with it again. I say to my colleagues that in significant part pretrial, probation, and parole clients are placed in treatment programs under close supervision to prevent their return to illicit drugs and crime.

As of 1983, over 50,000 drug abusers and offenders have participated in 72 TASC programs not only in Florida, Delaware, but many other places. Savings have been realized from the program due to the decreased correction court prosecutional and probation workloads.

For example, of those successfully completing the program in one project, 91 percent had no subsequent arrest. That is only one program, I acknowledge. But it was significant. Although budget reductions have precluded comprehensive program evaluations since 1983, there is every indication that the TASC program continues to be useful and effective.

In 1986, Alabama, Alaska, Arizona, Delaware, Hawaii, Maryland, North Dakota, and Wisconsin used TASC as their primary justice assistance program. There are currently 100 TASC programs in 18 States receiving $460,000 in Federal justice assistance funds. It is essential as part of our war against drugs that we continue to fund these treatment programs, and I urge my colleagues to adopt the Kennedy amendment on which I ask to be added as a cosponsor.

I yield the floor.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. THURMOND. Mr. President, we are willing to approve this amendment.

Mr. BIDEN. I move the amendment's adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment (No. 34043) was agreed to.

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

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

The motion to lay on the table was agreed to.

□ 1740

AMENDMENT NO. 3044

(Purpose: To provide additional requirements for Department of Defense support of drug interdiction activities)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. DECONCINI], for himself, Mr. DIXON, Mr. D'AMATO, Mrs. HAWKINS, Mr. MATTINGLY, and Mr. WILSON proposes an amendment numbered 3044.

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

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

The amendment is as follows:

At the end of title III, insert the following new section:

SEC. 3602. ADDITIONAL DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of enactment of this Act, the Secretary of Defense shall prepare and submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives—

(A) a detailed list of all forms of assistance that shall be made available to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, and

(B) a detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not limited to, the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(c) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities, as authorized by law.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Committees referred to in subsection (a) receive the list and plan submitted under such subsection, the Secretary of Defense shall convene a conference of the heads of the Federal Government agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such matters.

(c) APPLICATION TO OTHER DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE IN THIS ACT.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(d) REVIEW OF DEPARTMENT OF DEFENSE COMPLIANCE BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsectins (a) and (b) and, not later than 90 days after the date on which the conference is convened under subsection (b), transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

Mr. DECONCINI. Mr. President, the amendment that I am offering today with Senator DIXON, Senator D'AMATO, and Senator HAWKINS, and others, addresses one of the most important, and yes, one of the most controversial issues surrounding this omnibus drug bill. The issue that is the focus of our amendment is the role that the military should play in our war on drugs, and how far the country is prepared to go in bringing the Armed Forces directly into our national effort to combat the drug trafficker. The House of Representatives has spoken loud and clear on this matter. The so-called Hunter amendment passed by a vote of 237 to 177, after the House passed the Bennett amendment by a landslide 359 to 52. These amendments in tandem not only authorized the Secretary of Defense to put his troops directly into the process of assisting civilian law enforcement officers in the search, seizure, and arrest of drug smugglers, it directed the President of the United States to use the military to halt any penetration of the drug smuggler across our borders, within 45 days of enactment of this bill. As our kids might say, "That is serious stuff".

Mr. President, the Hunter and Bennett amendments represent a dramatic change in how we attack the drug problem. It turns the troops loose on the drug smuggler. It virtually abolishes the restraints under posse comitatus that have been with us since the 18th century. And it also signals to the Nation and to this body, the frustration that millions of people share on the drug trafficking problem. But perhaps equally important, it shows that the House of Representatives is fed up with the footdragging and lack of initi-

ative by our military to assist our civilian drug enforcement agencies within the bounds of current law and restraints.

Mr. President, I share many of the concerns, frustrations, and anger that our colleagues in the House have expressed in their votes 2 weeks ago. Frankly, if the Hunter and Bennett amendments were offered on the Senate floor, I would vote for both of them.

But I understand there is a strong feeling against this approach. In lieu of that, I am realistic enough to know that we should find perhaps another solution first. In so doing, therefore, Mr. President, I have crafted an amendment that would force the Pentagon to either "fish or cut bait" on the subject of assisting our civilian drug enforcement agencies under current law. This amendment also will put a heavy burden on our primary Armed Forces oversight committees—Armed Services and Appropriations—to approve the use of more existing DOD assets and resources for civilian drug enforcement support.

First, let me say what this amendment does not do. It does not, unfortunately, contain any remnant of the Hunter or Bennett amendments that passed the House. And there is nothing in this amendment that provides any new arrest or seizure authority to the Armed Forces. Posse comitatus is not amended, nor even clarified under our amendment. Here is how our amendment would work:

First. The Secretary of Defense would have 90 days from the date of enactment of this bill to do a complete inventory of all military equipment; assets; support; intelligence; and other forms of assistance that shall—not "may"—be made available to the civilian drug agencies to help combat the drug smuggler.

Second. In that same 90-day period, the Secretary must also prepare an actual implementation plan as to how he shall—not "may"—loan such equipment and assistance to the civilian drug agencies. The amendment does not make either the inventory or the implementation plan discretionary on the part of the Secretary. He has to produce it.

Third. The inventory and implementation plan are then submitted directly to the two major committees of Congress with jurisdiction over the Armed Forces—the Armed Services Committee and the Committee on Appropriations. These committees will then have only 30 days to either approve or disapprove each and every item contained in the Secretary of Defense's report on what can be provided to civilian drug enforcement agencies from DOD.

Fourth. The committees submit their recommendations directly back to the Secretary of Defense—there is no "middle man" agency involved in our amendment. The Secretary must then immediately convene a conference of all heads of the drug enforcement agencies to discuss the distribution of the approved items of assistance that have been recommended by the Secretary and approved by the committees. Memoranda of agreement [MOA] would be signed and distribution of the assets or commitments of assistance would be completed within 60 days from the convening of the conference of agency heads and the Secretary. The agency heads themselves must participate in the conference—not their designees.

Fifth. Finally, the General Accounting Office would monitor the entire reporting and distribution process and report directly to Congress regarding DOD's compliance and cooperation in carrying out these new statutory requirements to assist our civilian drug agencies.

Sixth. These provisions and this amendment would not—repeat, not—apply to the assets, resources, assistance, and other forms of support that are contained in this omnibus drug bill. The inventory of assets and assistance from the Secretary would contain assets and assistance over and above the items of assistance; assets; and other forms of support authorized and assumed in this bill, or if there are some added by amendment.

That is it, Mr. President, plain and simple. There is nothing complicated about this amendment. There is no smoking gun or hidden agenda. It puts the burden squarely on the shoulders of those who are feverishly fighting the Hunter amendment and singing the blues about the Pentagon being asked to do more. Well our amendment gives those folks, especially the Pentagon and the four major oversight committees in Congress, about 6 months to show the Nation that they really do want to help in our war on drugs—and not just complain about the House action. This amendment will give DOD and Congress a chance to show what the boundaries of posse comitatus really are and how much we can really do within its boundaries.

Mr. President, it is true that the Department of Defense and the committees could recommend no additional support for civilian drug interdiction or enforcement. It is true that the committees could turn down each and every recommendation of the Secretary of Defense. It is true that both the committees and the Secretary could ignore the deadlines imposed in the amendment. There are no civil or criminal penalties attached to this amendment for noncompliance by the Secretary or the committees. But let me say right here and now so that there is no misunderstanding among my colleagues. If this amendment is rejected, or if it is approved and there is not substantial compliance with the provisions in the amendment, then I will work tirelessly next year with Congressman HUNTER, Congressman BENNETT, and other Members of Congress to legislate the direct use of the military in drug interdiction and enforcement. In fact, I will offer an amendment to the DOD authorization bill or another comparable vehicle to accomplish this goal if we do not see something along this line by DOD over the next 6 months.

Mr. President, President Reagan has declared a national security emergency regarding the drug threat to the United States. Polls show that the majority of American people are willing to do whatever it takes, including using the military, to rid the Nation of drugs.

This amendment does not have the whole answer, I realize that. But it will smoke out anyone who does not want to get into this battle, and it will smoke out some of those in the military—and I do not use a wide brush because there are many in the Pentagon who agree that a lot more could be done. It will force them to come forward with plans and assets and maybe we can really move on the drug war.

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

Mr. DECONCINI. I am happy to yield.

Mr. GOLDWATER. Mr. President, I think my friend from Arizona has offered a workable amendment. As chairman of the Armed Services Committee, I find nothing difficult in accepting this, although I will not be here to see whether it is working or not.

I think, though, we should clear this up about the military. It has only been a short while that there has been any suggestion—not demands—made on the military for the use of their equipment.

□ 1750

I have to say that there has been no real concentrated effort to come up with sensible suggestions. I have heard, well, we ought to use AWACS aircraft. Nobody has said precisely how it could be used to identify a man or two or three men coming across our border that we are so well acquainted with. The suggestion that I do not want to entertain, and I hope it is not made, is that the military use their forces to arrest.

To give some idea of what we are talking about, if that became a law and it was necessary, to accomplish the purpose I have heard said or stated, that we surround the borders of the United States with troops, that would cost about $40 million a day. I know my friend from Arizona would never think of doing that. I think it

would be a very, very dangerous thing to repeal the act that was passed just after the Civil War that prevents an American man in uniform from making an arrest. I can think back and remember Hitler and Mussolini and I do not think we want to have a repetition of that.

I can assure my friend from Arizona that I have no objection to taking this amendment and I can assure him that the armed services will be very happy to work under this plan. Because this is a plan. This is not just a bunch of wild-eyed suggestions that the military has been listening to. This contains sensible suggestions that they can follow and report back. I can assure my friend this will be done.

Mr. DECONCINI. Mr. President, I thank my senior colleague. Indeed, I want to say right here and now that he has been the leading force in moving the armed services to give the—let me say meager—resources of the military over to this use. In this amendment, as the Senator says, I talk about plan. When you talk about war, you first have to have a plan. You have a plan of action, a plan of mobilization and then you move. This is indeed a plan and I thank my senior colleague, Mr. GOLDWATER for his comments.

Mrs. HAWKINS. Mr. President, I applaud the Senator from Arizona [Mr. DECONCINI] for this amendment we have worked together on so it would be acceptable to others who may not feel there is a role for the Department of Defense in the war on drugs. Senator DECONCINI was well known, long before I came to the Senate, as a battler and a great leader in this ongoing action that we have seen year after year. I am glad to be a cosponsor of this amendment.

The Department of Defense, as late as yesterday, was calling. Secretary Weinberger called me to give me assurances that they are doing all they can.

The American people do not have the perception that there is enough action. Day after day, we get letters saying, "If you were really serious about a war on drugs, you would use some of the equipment we have been paying for year after year for readiness. More can be done." And they give a list of items they would like to see used.

This amendment will ensure that the Department of Defense increases its participation in interdiction and drug detection. We assure that DOD assistance can be earmarked if we find we have the resources that can give assistance to State and local law enforcement personnel.

It also would make sure that the Secretary of Defense can increase his accountability to Congress.

For too long, surplus DOD equipment—surface-to-air missiles, aircraft, and other equipment have not been available. For too long, the Air Force has lacked a battle plan to combat the use of drugs. This amendment is our effort to assure that the Department of Defense participates in the national crusade against drugs. I urge our colleagues to join us in accepting this plan.

Mr. President, I urge adoption of the amendment.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The President pro tempore.

Mr. THURMOND. Mr. President, I wish to direct a question to the able Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. Yes, Mr. President.

Mr. THURMOND. As I understand it, the original amendment of the able Senator from Arizona provides that the military can make arrests, but I see nothing in here to that effect. I would certainly oppose that. This amendment concerns assistance, equipment, and so forth and I see nothing in this now that we would object to.

Is the statement I made correct, Mr. President?

Mr. DECONCINI. If the distinguished President pro tempore will yield, the amendment that the Senator from Florida and I have been working on for some time would have originally provided very similar language to the Hunter amendment on the House side. We labored on this for some time.

At the same time, I have had on the top of my head a draft of an amendment that would establish a DOD plan first. The Senator from Florida and the other Senators who have cosponsored this amendment agreed that we would try this approach and develop a comprehensive plan out. Quite frankly, as I told my good senior colleague, I may come back later if we get foot-dragging from DOD. I do not want to accuse anybody and I am not, but there is no new authority in this amendment; no changing of the posse comitatus law; no authority given to the military to make arrests or apprehensions.

Mr. THURMOND. There is no authority mandated in this amendment?

Mr. DECONCINI. This is correct.

Mr. THURMOND. With that change, Mr. President, we are willing to accept the amendment.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I have looked at this amendment carefully and while I would certainly oppose the Hunter amendment, as I read it, this amendment is entirely different. This amendment asks the Secretary of Defense to do a careful analysis of what the Department of Defense is now accomplishing in the overall drug field and to make an inventory of assets that could be made available that are not now being made available.

As I understand the amendment, it then mandates that those assets the Secretary of Defense furnishes on the list would be made available. Is my interpretation correct?

Mr. DECONCINI. Yes, Mr. President.

Mr. NUNN. As I understand this amendment, the Senator is saying it does not in any way appeal or amend what is the effective Posse Comitatus Act as amended by the Nunn amendment in 1982.

Mr. DECONCINI. The Senator from Georgia is correct.

Mr. NUNN. One further question. As I understand the amendment, what it really says to the Secretary of Defense is, we want you to furnish us an inventory of ways you can assist us in the drug effort that you are not now doing?

Mr. DECONCINI. That is correct, within 90 days.

Mr. NUNN. The things put on that list to submit to the appropriate committees of Congress will be done as a matter of law, will be implemented, is that correct?

Mr. DECONCINI. The Senator is correct. If the committee approve it within 30 days, then the agencies involved—law-enforcement agencies and the Secretary—will sit down themselves, and sign interagency agreement for transfers of DOD assets.

Mr. NUNN. Mr. President, I think this is a good approach, a responsible approach. There have to be careful analyses done to see what the Department of Defense can do that they are not doing. I think they can do more. I was the one who started this getting the military involved. We do have to draw a line.

I do not think the amendment of the Senator from Arizona crosses the line. I think if the Hunter amendment were proposed, it would cross the line. I urge the Senate to adopt this amendment.

Mr. CHILES. I think this is a very plausible amendment as well. We have been trying to get the military involved or more involved. In the package we have before us, we are asking also for an inventory of installations that we can incarcerate prisoners in. We know there are military installations, some closed and some not, that we can use to incarcerate some of these people we are dealing with.

The Senator from Arizona is going further and saying, let us look at what we have in the way of equipment and the ability that the military would have. I think that is very plausible.

Mr. DECONCINI. If the Senator will yield, the Senator is correct. Also, I think it is important to note that the

Senator from Florida [Mr. CHILES] has been one of those Senators who has continuously pushed, in the Appropriations Committee, which he and I served on. The Senator from Georgia, being the ranking member of the Armed Services Committee, has also been most receptive to this.

Quite frankly, we all know there has been a little bit of footdragging by DOD, maybe for good reason, because of mission or what have you, but the Senator from Florida has been willing to move in this direction. Now we are going to force the Department of Defense to come forward with everything they have. If they do not, quite frankly, I may be one of those to step beyond the line that the Senator from Georgia aludes to.

□ 1800

But I think we have to try something here first.

Mr. CHILES. The Senator is correct. We did sort of join together and ask the Department of Defense to come up with a plan. That plan, I am afraid, was not worth as much as the paper it was written on as far as really trying to nudge them, but in the meantime the President has now issued an Executive order and we are still trying to nudge them to get them to do something.

Mr. DECONCINI. That is why I offer it in the statute, to make it part of the law. Hopefully it will get action.

Mr. NUNN. Will the Senator yield——

Mr. CHILES. I am happy to yield.

Mr. NUNN. For a question to the Senator from Arizona? The Senator said in his dialog that there would be committee approval required, section B, on page 3, of the amendment. As I read the amendment, though, there is no committee approval required. There simply is a submission to the committees, and then 30 days after the submission the Secretary of Defense shall then undertake an interagency meeting and review. Does the Senator intend for the amendment to require committee approval before implementation?

Mr. DECONCINI. Yes. I do not have the amendment right here. I sent one to the desk and gave one to my senior colleague. But it is my understanding that it would allow the committees to approve what has been inventoried and sent to them by the Secretary.

Mr. NUNN. I believe the Senator may want to get staff to take a look at that because I believe some language has been left out of the amendment in that regard.

Mr. DECONCINI. If the Senator will be so kind to direct me to it. On line 12?

Mr. NUNN. It would be line 12, page 3 of the amendment that I have at least. Perhaps I have the wrong amendment. But I believe it is the right one. On line 12 it says: "The committee approval and final implementation," but then it goes on to say, "within 30 days after the date on which the committees referred to in subsection (a) receive the list and plans submitted the Secretary of Defense shall." So there is a receipt required but it does not say anywhere about approval that I can read, unless it is somewhere that I have not found.

Mr. DECONCINI. I thank the Senator from Georgia. I will, while some other Senators are perhaps discussing this, review that and modify the amendment if necessary. I thank the Senator from Georgia.

Mr. President, I point out that the Senator from Georgia has made a very astute observation, as he does in his legislative capacity. He is correct, that the procedure which I had represented is not here in the amendment, at least not pecisely. It is the intent that the appropriate committees should approve or disapprove these plans. I thank the Senator from Georgia and his staff for bringing it to our attention.

I send a modification to the desk, and I ask unanimous consent that the amendment be so modified.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment is so modified.

The modified amendment is as follows:

At the end of title III, insert the following new section:

SEC. 3602. ADDITIONAL DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall prepare and submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives—

(A) a detailed list of all forms of assistance that shall be made available to civilian drug law enforcment and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, and

(B) a detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities, as authorized by law.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Committees referred to in subsection (a) receive the list and plan submitted under such subsection, the Committees shall submit their approval or disapproval of such list and plan to the Secretary. The Secretary of Defense shall then immediately convene a conference of the heads of the Federal Government agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or any other assistance made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such matters

(c) APPLICATION TO OTHER DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE IN THIS ACT.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(d) REVIEW OF DEPARTMENT OF DEFENSE COMPLIANCE BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b) and, not later than 90 days after the date on which the conference is convened under subsection (b), transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

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

Mr. DIXON. Mr. President, just briefly, before this amendment is adopted—and I realize that the managers of the bill have agreed that they will accept the amendment of the distinguished Senator from Arizona—I wish to state that I am a cosponsor of this amendment. I appreciate the efforts made by the Senator from Arizona.

I think it is very important that the Secretary of Defense and others undertake a study as soon as possible about the available military hard-

ware—airplanes and other materiel—that can be usefully employed in drug interdiction.

However, I want to make this point perfectly clear. I have heard a number of my colleagues express their horror at the adoption of the Hunter amendment by the House. I want to make it very clear to their Members of the Senate—to my colleague from Arizona and others—that this Senator supports the Hunter amendment.

□ 1820

I think that we should do something about posse comitatus. What happened in the Civil War is not applicable in 1986 when we have a drug fight in this country.

I have the Hunter amendment prepared here right now and I may offer it this evening, Mr. President.

I just want to say as a member of the Armed Services Committee that this Senator as a ranking minority member on the Preparedness Subcommittee of the Armed Services Committee, we are spending hundreds of millions of dollars in this country supplying money for steaming time for our ships, for flying time for our aircraft, for wargames by all of our personnel in the Armed Services, and we ought to be spending those hundreds of millions of dollars training those people to interdict drug traffic into the United States of America.

While there may be some concerns by others who I greatly respect on my committee about this question, I have been sitting here for the last few minutes—I had not thought, very frankly—I do not say this critically of my friend from Arizona—that we had compromised this amendment this much. I am going to support this amendment. It is a step in the right direction. But we could be training those young men and women in our country in drug interdiction and doing that steaming time and that flying time and those wargames just as easily to get the job done against the drug traffickers, and I am going to think about it a little while, but I have an amendment right here and the Hunter amendment, as far as this Senator is concerned, is a good idea and it ought to be in this Senate bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if I could ask my friend, Senator DECONCINI, a couple questions about this amendment relative to the new language which he submitted to the desk. I do not have a copy of that language and perhaps he could illuminate it for me.

As I understand the amendment—and by the way, I also support the use of our military at our borders to try to stem the flow into the United States of drugs in ways which are consistent with our Constitution. I think we ought to use them much more than we have.

I think Senator DECONCINI has been leading the way on this and I applaud him for it. I think he has put his finger on something important. It is a threat to this country to have these drugs flowing into this country as much as the military threat so-called or threats to this country.

So I think he is on the right track. My questions come and are asked in that spirit as someone who is trying to help him achieve the purposes of this amendment.

As I understand this amendment, as amended or modified, there is a plan that is submitted by the Executive to the committees, the Armed Services Committees of both the House and the Senate, as to how the Executive would use the military in greater ways in stopping drug traffic into this country.

Am I correct in saying that in the event the committees of Congress which are identified in this amendment disapprove this plan in some way, formally or informally, that the executive could nonetheless carry out that plan.

Mr. DECONCINI. Mr. President, if the Senator will yield. First let me thank the Senator for his strong feelings about the plan and also about the use of the military. I concur with him. The Senator is correct, that the plan must be submitted to the Armed Services and Appropriations Subcommittee on Defense within 90 days.

Under the scenario the Senator points out, if that plan was not approved, what could the Department do? It can still act. It could act today without any change in current law. The point of this legislation is to force the Department of Defense to act. Of course, if it submits a plan and follows the law, which I think it will, the point of having the committees review it is so that they will have an opportunity to maybe move the Defense Department even further or to ask the pertinent questions. For example, if the Secretary of Defense claims that there are only four P-3's available in our stockpile to make available to civilian agencies for drug enforcement, or C-12's or E-2C's, when in fact the authorization committee knows how many are available for this mission and can easily say, "Wait a minute, you can do more than 4, why can't you do 20?"

That is the purpose and I thank the Senator for clarifying that.

Mr. LEVIN. So this amendment then does not get us into the situation where there is a legislative veto which would be permitted either by Congress or by a committee or subcommittee of Congress of a decision of the executive branch.

Mr. DECONCINI. If the Senator from Michigan will yield, he is absolutely right. This does not go to that because it does not bind or prevent someone from acting, in this case the Department of Defense, if the authorizing and the Appropriations Committee did not approve the plan.

Mr. LEVIN. I, too, am disappointed that this amendment cannot go further for the reasons which I think have been clarified on the floor as to what the practical situation is here.

But I do commend the Senator for at least advancing this matter one small step farther.

I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. CHAFEE. Yes, Mr. President.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to ask a question to see if I thoroughly understand this amendment. As I understand the amendment, the Secretary of Defense, within 90 days, shall compile a list of that equipment which he believes is appropriate for interdiction activities to assist our other drug enforcement agencies, the Coast Guard, and so forth, for interdicting drug supplies coming into the country and then at the end of those 90 days he shall submit the list to the appropriate committees, the appropriate committees as I understand it being the Appropriations Committee and the Armed Services Committee and their counterparts in the House.

Mr. DECONCINI. Mr. President, if the Senator will just yield, the Senator, as far as he goes, is correct. But the Secretary also submits a plan on how the implementation and transfer of these assets will be made available; in what period of time; in what quantity; and so forth.

Mr. CHAFEE. Just carrying it that far, is it the equipment that he has in his total inventory or is it equipment that he believes can be made available? For example, suppose he has a total of 30 P-3's, and he is using these P-3's in antisubmarine activities. I said, for example, he had 30, let us say he is using 25. He feels he could release five. Is he required to submit on this list 5 or 30?

Mr. DECONCINI. If the Senator will yield, he does a complete inventory of DOD assets that can be made available to customs or other civilian agencies on loan, or through DOD support. In the instance of the example of the Senator from Rhode Island used, the Navy has 30 P-3's. The Secretary submits what he believes can be made available directly to the agencies or used by the Navy to support this effort by civilian law enforcement. So he may not submit the 30. But he may submit that as an indication of how many he has totally. He would not submit that. He would submit how many he believes could be turned over

to the agencies or used to enhance this war on drugs.

Mr. CHAFEE. Is it how many he believes could be successfully used in this effort, or how many—let us say, he concludes that it will be useful to have 10 P-3's in this effort, but his own demands as Secretary of Defense require that he have 25. So, he does not have 10 available. What does he put on this list, the 10 or what he has available, let us assume, is five?

Mr. DECONCINI. Mr. President, if the Senator will yield. The Secretary would submit a plan of what he has available that is not obviously being used for the national security of the country. That leaves a great deal of discretion but it forces, in my judgment, the Secretary and his Under Secretaries and Assistant Secretary and the Chiefs of Staff to go through a rigorous inventory of these items; what is there that can be used that is not being used now; and what could be loaned to the civilian agencies, such as Customs. So he would submit the 5, as available for loan to the agencies.

Mr. CHAFEE. Let us proceed to the next step. So he has submitted his list and the respective committees review it, and as I understand in 30 days they make some decision that, yes, we would like to use this equipment, we believe it can be used. Then what happens? And I am not sure and perhaps this has been touched on in the discussion.

Mr. DECONCINI. Then the Secretary convenes the agencies involved, that is, those law enforcement agencies, the heads of those agencies and service branches that would transfer this equipment and they sit down and enter into memoranda of agreement to exchange on a loan basis the particular equipment. They have 60 days to enter into these agreements and to implement those exchanges.

Mr. CHAFEE. Now, what confuses me is the amount of discretion here. In other words, I am not clear who is running the operation.

So he then enters a memorandum of agreement with, say, the head of the Drug Enforcement Agency to turn over this equipment or see that this equipment is employed in accordance with some of this program that previously they have drawn up.

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Mr. DECONCINI. The Senator is correct.

Mr. CHAFEE. Now, suppose the Secretary of Defense says, "I have this equipment in our inventory, but we have requirements and we are going to have requirements that will conflict with this equipment being deployed in accordance with the plan that the Drug Enforcement Agency, for example, has"? Who is in charge? That really is my question.

Mr. DECONCINI. If the Senator would yield, he raises a good question.

But if the Senator would back up a step or two, what the Secretary must do in his inventory and plan, is submit that plan to the committees of what is available, what is not necessary for the immediate national security mission right at that time. That plan, let us say for our purposes, is approved or amended by the committees. The Secretary gets it back. He now takes that plan to the Drug Enforcement Administration, Customs, and to the heads of the other agencies and sits down with them and says: "Let's implement this plan right now."

So the answer to the Senator's question is that the Secretary has substantial discretion in developing the inventory and implementation plan.

And let us carry it a little further and say the Secretary submits a plan and that says: "Out of all the assets we have in the country, we have one P-3 we can offer you folks. That is it."

I think there is going to be a great upheaval, both in those committees, and by this Senator and others who are going to know what kind of assets, at least to some extent, the Secretary could have made available. This makes the Secretary look at all those assets and make an honest judgment and effort.

After that, we have GAO monitoring compliance in here to help insure that the Secretary does look very earnestly at those assets; develop an inventory and provide an action plan. But the discretion as to who is in charge, the answer to the Senator from Rhode Island is the Secretary still has the ultimate decision of whether or not to submit any plan, or how the plan is developed.

Mr. CHAFEE. Let us assume that the committees are not satisfied with the amount of equipment that the Secretary has proposed to be available. He has said one P-3 and they say, "No, we are demanding 10." And so the committees demand the 10 in their plan.

Now who resolves the conflict? They demand 10, the Secretary says 1. Who is in charge?

Mr. DECONCINI. Well, the Secretary's plan is submitted and is approved and/or disapproved or amended. If they disapprove it, the Secretary is left out there without an approval plan. But there is nothing in the amendment that would preclude him from moving ahead on his own with the agencies under current law. And you are going to know that. Because the time limit in the statute will require the committee to respond.

To me, it makes very good sense. The Secretary stays in charge of our national security, which he has a responsibility to do. But the Secretary is going to have to think about the war on drugs, and the need to use additional assets in the military that are not essential at that time for our national security, and to loan them. So the Secretary stays in charge.

This does not give the authority to the Congress to tell the Secretary to send 10 P-3's, unless they want to pass a bill to do it, as we have had to do up to now. But it is going to force the committees that have jurisdiction here to work with the Secretary to implement this plan.

And, as the Senator from Illinois has pointed out, I would go further. But in deference to the good judgment and wisdom here of the Senator from Rhode Island and the Senator from Georgia and my senior colleague from Arizona, I have consented to let us do a plan and let us get the Secretary really involved.

Let us get the Department of Defense and all those Pentagon experts really involved in coming forward with a plan of using some of these assets before we consider, as the House did, mandating that they do more, beyond the bounds of posse comitatus.

Mr. CHAFEE. Well, I certainly would not be for that mandate.

I have some reservations about the Secretary of Defense's drawing up master plans to combat drug trafficking. That is not his expertise.

In drawing up this plan, is he to consult with or does he have access to the drug enforcement officials, the Coast Guard officials? Are they consultants in this plan?

Mr. DECONCINI. If the Senator will yield, of course, I disagree with him. I think the Secretary, because the President said drugs are the No. 1 national security problem, should be deeply involved. But let us put that aside. The Senator from Rhode Island thinks he should not be.

He is not laying out a master plan for "drug enforcement." What he is doing is coming forward with the "assets" that he thinks he could let go or permit to be used by the law enforcement agency. And the Secretary or chief of staff is going to talk to those agencies during the 90-day period, saying "What do you need?" I am not sure there is that communication now. Up to now, the Congress has stepped in and mandated transfer of equipment today that the Secretary has not volunteered to our law enforcement agencies and mandating that the communication; intelligence gathering; aerostat balloons, E2C airplanes, and many other helicopters, and so forth, are made available to Customs, Coast Guard, and other agencies.

This is going to force the Secretary to come forward with something. And I think he will. I do not think he is going to sit there and say, "How am I going to stop all drugs?" That is not the intent of this. The intent is "what

do I have in the military inventory that could be used by civilian law enforcement and that I can permit them to have?" To me it makes sense. The Senator may disagree.

Mr. CHAFEE. I thank the Senator.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. NUNN. Mr. President, may I just offer one word here? I think that some type of an overall plan and inventory is absolutely essential. I think the Hunter amendment is the equivalent of passing a law saying the President shall, by Thanksgiving, devise a cure for the common cold.

I do not think that passing a law is going to make it happen. When we say, "Stop every ship, stop every plane, stop drugs coming into this country, we order you to, Mr. President," I think it is ridiculous. We could order him to stop the Soviet missiles deploying SDI, we could order him to do a lot of things, but passing a law does not make it an actuality.

I hope if they offer the Hunter amendment, I hope they consider it carefully because it would basically require more surveillance aircraft for this one job than we have in the whole inventory, than we have in the whole world. So I think we need to proceed cautiously here and I think the Senator from Arizona is doing that.

The Senator from Arizona is asking for an inventory and asking for a plan. That is a condition precedent to any kind of analytical, objective approach to this subject.

So I think it is a good amendment. I would say to the Senator from Arizona that he may want to consider a rollcall vote on this one because I think there are a lot of people who perhaps would like to go on record. I do not know how many other amendments there are and whether they want to stack them or not.

Mr. THURMOND. Mr. President, unless rollcalls are necessary, we have a lot of work to do and we are going to finish the bill tonight. We have accepted the amendment.

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

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

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

The yeas and nays were ordered.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Senator from California, Mr. WILSON, be added as a cosponsor.

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

Mr. DECONCINI. Mr. President, let me say I am prepared to move to a vote. I think we are moving a little bit closer to the Hunter amendment. I would like to have an opportunity to debate that, because, with the greatest respect to my colleague from Georgia and my senior colleague from Arizona, I am not sure that if the verbatim, actual words that are in the Hunter amendment, were modified, we could end up with the Hunter amendment if DOD fails to respond to this amendment. But, indeed, there is need to employ our military resources in a far more aggressive way than what we are doing.

Mr. President, I ask unanimous consent that the Senator from Michigan, Mr. [LEVIN], be added as a cosponsor.

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

Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Arizona [Mr. DECONCINI]. The yeas and nays have been ordered and the clerk will call the roll.

The Legislative Clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Washington [Mr. GORTON], the Senator from S. Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Massachusetts Mr. KENNEDY], the Senator from Massachusetts Mr. KERRY], and the Senator from Illinois [Mr. SIMON are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR, is absent because of death in the family.

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 83, nays 4, as follows:

[Rollcall Vote No. 297 Leg.]

YEAS—83

Abdnor	Goldwater	McClure
Andrews	Gore	McConnell
Armstrong	Gramm	Melcher
Baucus	Grassley	Metzenbaum
Biden	Harkin	Mitchell
Bingaman	Hart	Moynihan
Boschwitz	Hatch	Murkowski
Bradley	Hatfield	Nickles
Broyhill	Hawkins	Nunn
Bumpers	Hecht	Packwood
Burdick	Heflin	Pell
Byrd	Heinz	Proxmire
Chafee	Helms	Riegle
Chiles	Hollings	Rockefeller
Cohen	Humphrey	Roth
Cranston	Inouye	Rudman
D'Amato	Johnston	Sarbanes
Danforth	Kassebaum	Sasser
DeConcini	Kasten	Simpson
Denton	Lautenberg	Specter
Dixon	Laxalt	Stevens
Dodd	Leahy	Symms
Dole	Levin	Thurmond
Domenici	Long	Trible
Eagleton	Lugar	Warner
Exon	Mathias	Wilson
Ford	Matsunaga	Zorinsky
Glenn	Mattingly	

NAYS—4

Durenberger	Stennis
Evans	Weicker

NOT VOTING—13

Bentsen	Kennedy	Simon
Boren	Kerry	Stafford
Cochran	Pressler	Wallop
Garn	Pryor	
Gorton	Quayle	

So the amendment (No. 3044), as modified, was agreed to.

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

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

The motion to lay on the table was agreed.

AMENDMENT NO. 3045

(Purpose: To increase the assistance furnished by the Federal Government to officers and employees who abusively use drugs or alcohol)

Mr. DURENBERGER. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER], for himself and Mr. TRIBLE, proposes an amendment numbered 3045.

Mr. DURENBERGER. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the end of the amendment, add the following:

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to

confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. . SUBSTANCE ABUSE COVERAGE STUDY.

(a) STUDY.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug and alcohol abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug and alcohol abusers.

(b) REPORT.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. . HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) FINDINGS.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) all employers providing health insurance policies should ensure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs for individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

Mr. DURENBERGER. Mr. President, I rise today, as one Senator to add my brief perspective on what I believe is at least part of the answer to the Nation's tragic drug problem. The bill before us, I will acknowledge, is a substantial improvement over the House and the administration propos-

als to solve the problem and on balance it is a measure that I think I can support as it now stands, but I would like to take a few minutes to express my concern over some of the steps not taken and errors which may yet be made on this bill unless we bring the proper focus and approach to this measure.

Listening to the opening statements on this floor about this bill I have heard speaker after speaker refer to this bill, in so many words, as a comprehensive answer to our Nation's drug problem. That it categorically is not. Here is the official title of the Senate bill: "A bill to strengthen and improve the enforcement of laws against illegal drugs and for other purposes."

For once, Mr. President, we have truth in labeling of a Senate bill. This legislation is predominantly a crime bill: interdiction; stiff penalties; new authority for law enforcement. That is an important response, but one that falls far short of a national solution.

I would submit that illegal drug abuse is as much a health problem as it is a crime problem. It is just part of the broader substance abuse problem, along with alcohol and legal-drug abuse. As chairman of the Health Subcommittee of Senate Finance, I am greatly concerned that in an excess of haste, we are ignoring the very serious public health issues which foster crimes this bill is aimed at preventing. In pursuit of the urgent, we are overlooking the important.

Mr. President, I want to read from a document produced by the Hazelden Foundation of Minneapolis, MN:

The problems of chemical dependency and addiction are immense. The crisis facing the nation is staggering, but the real story is the lives of individuals and families that are ruined through alcohol and drug abuse.

THE NATION'S NUMBER ONE HEALTH PROBLEM

Ten to fifteen percent of all men who drink and three percent of all women who drink can be classified as heavy drinkers. Approximately nine percent of the population can be labeled as "problem drinkers." And the problem of alcohol abuse is not limited to adults. A recent survey of tenth through twelfth graders showed that eighty-one percent reported drinking at least once a week at an average of five or more drinks each occasion. Thirty-one percent of the youth were intoxicated during the past year.

It is little wonder that last year's Gallup Poll reported that one of five Americans found drinking to be a problem in his or her family.

Alcoholism is not the only chemical abuse problem facing the nation. Approximately one out of five Americans used prescription psychotropics. Of those who use minor tranquilizers and sedatives, one-third can be classified as heavy users.

The Drug Abuse Warning Network (DAWN) reports that the most frequently encountered drugs in hospital emergency situations are: (1) alcohol in combination with other drugs, (2) Valium, (3) heroin/morphine, (4) aspirin, (5) methaqualone, (Quaaludes), (6) Dalamane, (7) marijuana, (8) PCP combinations, (9) cocaine, and (10) Tylenol.

Drug and alcohol problems have serious long-term health effects, which effect Medicaid, Medicare, the Veterans' Administration, and the Department of Defense budgets. The criminal justice system can make only small contribution to reducing the number of chemically dependent Americans. The health care delivery system will have to do the rest.

State and local governments and public health departments have already assembled hard-earned expertise in these areas. Private health care providers have moved into this area and are beginning to develop an impressive record of success. This is a wealth of information and experience which we at the Federal level must tap in our own national drug policy. To my mind, the bill before us, constrained as it is by time, does not adequately reflect these concerns, and I am hopeful that it can be improved along these lines before it goes to the President's desk.

When millions of lives are profoundly affected by chemical abuse, and when there aren't half enough treatment programs to handle those that ask for help, and when abusers use health care services 3 to 5 times as much as nonabusers—now that's a public health problem. And the only way to get this legislative locomotive to its station is with a balanced load of law enforcement and health initiatives.

I have an amendment that would help us balance the load. I must first compliment the leadership in the progress that they have made in infusing more reason and thoughtfulness into this legislation. But, the bill is silent on one of the first subjects that put this train on the track. The President has called on the Federal Government to be a model employer for the Nation in fighting drug—and alcohol—abuse. This bill offers us a golden opportunity to prove that this means more than just not tolerating abuse on the job, but also that the Federal Government is compassionate and concerned about the health and well-being of its employees.

My amendment has two parts. First, it would confirm that this Government cares about its 4.3 million employees by requiring all Federal agencies to have employee assistance programs. It would also set up Governmentwide prevention, treatment, rehabilitation, and education programs for chemically dependent employees. I would like to add, Mr. President, that I may at a future date offer another amendment that would call for a 3-year demonstration program in the Federal Employee Health Benefits Program to test the feasibility of providing health insurance coverage for substance abuse treatment.

Now, Mr. President, if we are asking the Federal Government to be a model employer, I think it is only fitting for this Congress to call upon private employers to do their part too. The second part of my amendment would call for a study of substance abuse treatment coverage in private health insurance plans and express a sense of Congress that employers should provide adequate coverage for substance abuse treatment in employee health plans.

I don't know of any plan that offers coverage that even comes close to "adequate." Insurers are afraid this benefit will break the bank, yet there are many examples of creative, effective plans we can look to. Seventeen States mandate some minimum amount of coverage, and eight States require that it be an option. My home State of Minnesota has been a pioneer in substance abuse insurance coverage. Since 1978, insurers in Minnesota must offer both inpatient and outpatient treatment coverage. Minnesota is one of the only States to do this.

This is encouraging, but more is needed. Studies consistently show the cost-effectiveness of treatment—spending the money up front on treatment results in significant savings on total health care expenses. A study at the St. Paul Ramsey Medical Center in my home State of Minnesota recently showed that within 12 months of treatment, abusers' work performance problems, absenteeism, and job loss decreased substantially. And their arrests for misdemeanors both related to and not related to chemicals declined by over 75 percent. Now that's obviously good for everyone—employee, employer, and society. If employers and insurers don't know that, we're here to tell them and encourage them to get on the bandwagon.

I hope that these matters will be added to this bill. In my capacity as chairman of the Health Subcommittee of the Finance Committee, I want to also announce at this time my intention to hold hearings on the issues of public and private coverage for substance abuse treatment program, before the end of the year.

Mr. President, it is a common practice in this body for Members to take advantage of a popular and fast moving package to move proposals which cannot stand on their own. Such will undoubtedly be the case on this bill, and I want to state my support for the efforts of the leadership to keep a number of contentious constitutional issues off this bill. I, for one, will not allow this bill to become a vehicle for the reinstitution of a Federal death penalty. I will not support changes in procedures which diminish constitutional protection of due process and privacy. I will not support a hasty rewrite of the Freedom of Infor-

mation Act or the missions of the Defense Department or the Central Intelligence Agency. There are social cost and consequences to these possible amendments, which the Senate cannot properly assess in the time available.

Mr. President, my final concern is that in passing this legislation, that the Congress and the American people have a proper understanding of this exercise. This is not the beginning of the end of America's substance abuse problem, it is only the end of the beginning of that struggle. It is the nature of our people and their Government that what is a burning issue one day may be humdrum the next. We would be compounding this national tragedy if this legislation becomes only a hit-and-run response to substance abuse. We are making a national commitment in this bill to the long, difficult, and yes expensive effort to restore a greater degree of individual independence to our people.

We also need to understand where this battle will be won or lost. At its root, drug and alcohol abuse are not legal problems or medical problems, they are values problems. Our culture has been infected with an instant gratification ethic, and chemical stimulation is a large part of it. We need to reassert the value of a drug- and alcohol-free lifestyle. Who carries that message? Certainly not the Congress of the United States in a drug bill. That responsibility falls on teachers, coaches, preachers, employers, and everyone in the society that has credibility and authority in the eyes of Americans. Most of all, it starts at home. An old Spanish proverb goes: An ounce of mother is worth a pound of priest. Don't bring this problem to Washington, it belongs to all of us.

Mr. President, George Washington wrote:

It is only after time has been given for cool and deliberate reflection that the real voice of the American people can be known.

America is reacting today with horror and revulsion to the killing invasion of illegal drugs in our society. It will now be the job of leadership, the President—you and I—Americans—as persons as well as parents, to coolly and deliberately treat the problems which already exist and reshape the values which created them. That is the long journey we begin today.

The PRESIDING OFFICER. Is there any debate on the amendment?

Mr. CHAFEE. Mr. President, I would just like to ask, Is there any funding provided for this?

Mr. DURENBERGER. There is no specific authorization for funding in the amendment.

Mr. CHAFEE. I think it is an excellent idea, what the Senator is doing. I am not sure how effective it is going to be without some money. But let us go ahead and try it and see what they can do with the funds they are able to obtain. I just hope it is not going to be a great letdown, particularly when we are talking about not only employees but also their families as well. That is a big order, to do that without money.

Mr. DURENBERGER. Mr. President, in quick response, let me say this amendment has been discussed over a period of time with the Office of Personnel Management. OPM has already called on all agencies to set up employee assistance programs. Some have and some have not. The administrative work is already being done and these costs are being met within current budgets of the agencies that have the programs. Basic administrative costs and skills are already in place. EAP's are not expensive, as a matter of fact, they are cost effective for employers and employees in terms of increasing job productivity, decreasing absenteeism, and improving an employee's health overall. Developing and maintaining these programs can be done within the OPM's and agencies' budgets.

□ 1910

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. We are willing to accept the amendment on this side.

Mr. BIDEN. And we are willing to accept the amendment on this side. I think it is a good amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3045) was agreed to.

Mr. DURENBERGER. I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Is there a motion to table?

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

AMENDMENT NO. 3046

(Purpose: To encourage increased participation by the Civil Air Patrol in the Federal Government's drug interdiction program)

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I have an amendment on behalf of myself, Senator DOLE, Senator HAWKINS, Senator BIDEN, Senator BINGAMAN, Senator NUNN, Senator DIXON, AND Senator CHILES which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and others, proposes an amendment numbered 3046.

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

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

The amendment is as follows:

At the end of subtitle A of title III, insert the following:

SEC. . CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress (1) that the Civil Air patrol, the all volunteer auxiliary of the Air Force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and (2) that the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—From within any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986, carrying forward into fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, in addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) REPORTS.—(1) The Secretary of the Air Force shall make quarterly reports to the Committees on Appropriations and on Armed Services of the Senate and House of Representatives on the use of such unobligated funds made available pursuant to the authorization contained in subsection (b).

(2) Each report under paragraph (1) shall include a detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(3) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of the enactment of this Act.

Mr. HARKIN. Mr. President, I ask unanimous consent to add the name of Senator DECONCINI as a cosponsor.

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

(Note: In the RECORD of September 27, 1986, the remarks of Mr. HARKIN as they appear on pages S 13984 and S 13985 are incomplete due to the inadvertent omission of certain paragraphs. In the permanent RECORD the remarks will be printed as follows:)

Mr. HARKIN. Mr. President, in all of the debate and the effort so far to enlist the aid of our military forces, police forces, Customs agents, and everything to fight the war on drugs, I believe we are missing one vital component that we ought to enlist on our side. Mr. President, I want to take just a few minutes of the Senate's time to talk about that vital component and how I believe it can really fill one window that needs to be closed. I am talking about the Civil Air Patrol.

Mr. President, today the Civil Air Patrol is perhaps America's most unique volunteer public service organization. Its thousands of professional pilots and vast network of aircraft gives the United States a civilian emergency services capability matched by

no other nation. Since its inception at the beginning of World War II, this organization has come to the aid of our Nation time after time saving thousands of lives. The Civil Air Patrol established very early in its existence the ability to assist our Nation in time of crisis. When the Army and the Navy in the first few months of 1942 were unable to strike back at the deadly submarine menace off our Atlantic coast, it was the Civil Air Patrol that stepped in and literally saved the day.

Mr. President, I do not want to take a lot of time of the Senate. I believe the amendment will be accepted, but I do believe it is important and I do want to bring to the attention of the Senate the important work that the Civil Air Patrol has done and can do in this effort.

We all know what the Civil Air Patrol did during World War II, how it patrolled our coasts and sank submarines. However, the Civil Air Patrol has been for the last 30 to 40 years assisting the Air Force in all kinds of search and rescue services and other public service type of services to our country.

The legacy of the Civil Air Patrol's World War II experience was the creation of a public service organization able to perform a variety of emergency missions. Today the Civil Air Patrol has 65,000 members, standing ready to perform a variety of emergency missions. There are 1,570 aircraft owned by the Civil Air Patrol and it has over 10,000 member-owned aircraft. They are deployed over the entire continent of the United States, Alaska, Hawaii, and Puerto Rico. They support a large number of actual emergency missions.

The fact is, Mr. President, the Civil Air Patrol flies 80 to 85 percent of all the U.S. search and rescue missions coordinated by the Air Force Rescue Coordination Center, and I might add at a savings estimated to be over $25 million a year.

Last year alone the Civil Air Patrol flew over 14,000 hours on operational emergency missions. These emergency missions include the airlift of blood and vital organs, bay and river patrol, and, of course, search and rescue.

The use of the Civil Air Patrol, as I said, saves the U.S. Government millions of dollars each year and in search and rescue alone over $25 million annually.

Now, last fall the Civil Air Patrol approached the Customs Service and offered its services in the drug interdiction effort, Customs enthusiastically accepted the offer.

The Civil Air Patrol Pilot Drug Interdiction Program began September 1, 1985 in Florida. This Pilot Program was successful and CAP Drug Program regulations were published dealing with flight safety and operational concerns, and I might add that the Civil Air Patrol's participation is restricted to patrolling and reporting activities only. CAP members are forbidden from carrying weapons, making arrests, or chasing after suspects.

Since January 1 of this year, the CAP Drug Interdiction Program has flown over 600 hours on 160 authorized missions and while the results of most of these CAP missions are generally not made public, it is publicly known that at least one ship carrying a sizable amount of drugs was seized as a result of the CAP actions.

Mr. President, I want to point out to the Senate that the average cost of the Civil Air Patrol for flying these missions is only $30 an hour. Let me repeat that, $30 an hour. We can get Civil Air Patrol pilots flying these missions in surveillance and reporting of suspicious traffic coming into this country around the coast of Florida, the border of Arizona and California.

I might just point out that in many of the high-technology, high-flying planes that we are getting now, we are talking about operational costs of thousands of dollars an hour and here we are getting it only for $30 an hour. That is because of the 300 pilots and observers who have volunteered for these interdiction missions. Many are professional airline pilots, retired Air Force pilots, retired Navy pilots, and others. They are willing to serve their country in this vital war against drugs.

I want to stress again these are volunteers. They are volunteering their time. It is like a volunteer fire department. All they want is the truck. They are willing to give of their time and their experience. And so this amendment which I have offered is for $7 million which will buy not one, not two, but between 45 and 50, as many as 50 single-engine Cessna 182's. It will buy three twin-engine aircraft, it will buy and secure communications equipment needed to talk with the customs people, and it will give it all of the avionics they need for these 45 to 50 single-engine aircraft.

Again, I want to point out that we have a lot of high-technology, high-speed equipment that we are purchasing, but there is one window that is still open and that is that "low and slow" window. This is really what we need. When things are dumped in the ocean for boats to pick up, you cannot find this from a high-flying jet that is flying at 300 knots, but you can find it with a Cessna 182 that is flying at about 120 knots.

Also, in Arizona and California, a lot of small amounts of drugs are filtering across the border, many small boats coming up into California. That is the window that can be effectively closed by the Civil Air Patrol. And as I said, what you are really getting is a lot of bang for the buck, for 30 bucks an hour, if we can get highly qualified volunteers, people who have flown in the military, who are airline pilots, who will take from their free time on weekends and vacations, to go down and help us in this war against drugs.

So as I said, Mr. President, what it is, it is like a volunteer fire department. They are highly qualified. They are highly motivated. They are highly trained. They are mission qualified. All they want is the equipment and for $30 an hour, let me tell you that is a lot of bang for the buck.

Mr. President, I strongly urge the body approve this amendment. I apologize for taking the time of the body but I thought it was important for Senators to know about the Civil Air Patrol, what it does and how effectively it can be utilized, and the cost, how cheap it is going to be to get the Civil Air Patrol involved in interdicting drugs coming into this country.

I apologize for taking the time of the body but I thought it was important for Senators to know about the Civil Air Patrol, what it does, how it can be effectively utilized and how cheap it is going to be to get the Civil Air Patrol involved in interdicting drugs coming into this country.

Mr. THURMOND. Mr. President, we have agreed to accept this amendment and we are going to finish this bill tonight, but if people talk this long on all these amendments we will not get away from here until 3 o'clock in the morning. When we agree to accept them, why not accept them?

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER (Mr. BOSCHWITZ). The Senator from Virginia.

Mr. WARNER. Mr. President, if I could have the attention of the sponsor of the amendment, the distinguished Senator from Iowa, it is this Senator's intention to support the amendment, but I think that in fairness, as we begin to take more and more from the Department of Defense, we should ask ourselves several key questions.

□ 1920

Who is in overall control of this war on drugs; and who will be the overall manager of these assets to be provided by the Department of Defense in response to this amendment of the distinguished Senator from Iowa and especially the earlier amendment of the distinguished Senator from Arizona? Where is the plan for the war on drugs that we are requiring the Department of Defense to support? Who is going to coordinate and who is going to be responsible and who is going to formulate this war plan for the war on drugs?

Personally, I believe that drugs pose a formidable threat to this country—in many respects, greater in the immediate future than any other threat we face. That is why I support the

amendment. But, in fairness, we should know who is in charge, and we should have some kind of plan and strategy in order to attain the optimum results from the resources and assets we are requiring the Department of Defense to provide.

Mr. HARKIN. I cannot speak about the whole bill, who is in charge of everything. I do know that the Civil Air Patrol operates under the auspices of the Department of the Air Force, and the Civil Air Patrol comes from the Department of Defense to the Department of the Air Force.

With regard to this particular mission, they would be coordinating with the U.S. Customs Department and would receive their direction and guidanee about what to patrol and what to do from the U.S. Customs.

Mr. WARNER. I thank the Senator. I hope he will bear in mind the question of who is in control.

Mr. BIDEN. Mr. President, we accept the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. GOLDWATER. Mr. President, before the amendment is adopted, I want to compliment the Senator from Iowa for coming up with this idea.

The Civil Air Patrol is probably the best equipped organization—including the Air Force and the Navy, including all flying outfits—to perform the kind of flying missions necessary. When you patrol the 850-mile border we have with Mexico, there are no roads, where people can walk at night and not be seen.

I can tell you from personal experience with the Civil Air Patrol in World War II that the type of mission we are going to ask them to do is precisely the mission they did so well during World War II.

I think the suggestion made by the distinguished Senator from Iowa is probably one of the best that we have heard so far. In fact, it has so much merit that I would go so far as to suggest that we might even start on that as a plan.

The Senator from Virginia has pointed out that nobody has laid out a plan. We have the Justice Department, we have the FBI, we have any number of people that the President has mentioned who might be head of this war on drugs. But, so far, nobody is heading it up. I have heard a lot of talk about what States are going to do about drugs, but it is going to take leadership.

I can go back to the CAP and say with authority that this is the easiest and quickest type of flying we have, and it would produce more results than all the AWACS, Mojave Sidewinders, and high-speed aircraft we have, for similar patrol.

I congratulate the Senator.

Mr. HARKIN. I thank the distinguished Senator from Arizona. He is a long supporter of the Civil Air Patrol. As a pilot, he knows what these qualified pilots can do. They want to help, if we will only give them a little help. Some of these low-flying airplanes can do the job.

I thank the Senator from Arizona for his remarks.

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

The amendment (No. 3046) was agreed to.

SEVERAL SENATORS addresed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 3047

Mr. ANDREWS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. ANDREWS] proposes an amendment numbered 3047.

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

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

The amendment is as follows:

Amend section 4107(b)(1)(A) as follows: insert after the words, "including parent groups," the following: "and community action agencies,"

Mr. ANDREWS. Mr. President, my amendment will afford Community Action Agencies [CAPS] the opportunity to offer local broad based programs for alcohol and drug abuse prevention.

It is vitally important that these services are made available to all Americans, especially the working and nonworking poor. It is this group that benefits from the services provided by the CAPS. Both alcohol and drug abuse know no limits in terms of economic status. They are diseases not encumbered by the boundaries of wealth, class, education, or ethnicity. Just as public education is available to all Americans, so too should the accessibility to information regarding the dangers of alcohol and drug abuse.

North Dakota is served by seven Community Action Agencies. I have visited these agencies and their effectiveness is undeniable. I am confident that the CAPS will be an excellent source for providing American communities these much needed alcohol and drug abuse programs.

Mr. President, I understand that this amendment has been cleared on both sides of the aisle, and I urge its adoption.

Mr. BIDEN. That is correct. Mr. President, it is a good amendment, and we accept it. I believe the majority accepts it, also.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

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

The amendment (No. 3047) was agreed to.

AMENDMENT NO. 3048

Mr. ANDREWS. Mr. President, I have a second amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. ANDREWS] proposes an amendment numbered 3048.

Mr. ANDREWS. Mr. President, I ask unanimous consent that reading of the amendment be dispenses with.

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

The amendment is as follows:

Amend Section 4218 as follows:

Strike subsection (b) and insert in lieu thereof the following: "(b) the powers and authorities conferred herein shall be exercised in accordance with an agreement entered into between the Secretary and the Attorney General of the United States."

Mr. ANDREWS. Mr. President, section 4128 provides statutory authority for the Secretary of the Interior to authorize employees of the Department of the Interior, to exercise law and order powers in Indian country. Subsection (b) authorizes the Secretary to commission law enforcement personnel of other Federal agencies and tribal, State, or local law enforcement personnel to exercise such authority.

The Department of Justice has expressed concern that the authority provided in subsection (b) may be overly broad and has requested this amendment.

This amendment deletes the provision of subsection (b) and provides alternative language that will require that the powers and authorities conferred in section 4218 shall be exercised in accordance with an agreement between the Secretary of the Interior and the Attorney General.

Mr. President, this amendment has been cleared on both sides of the aisle, and I urge its adoption.

Mr. BIDEN. Mr. President, we accept the amendment. It is a good amendment. I believe the majority also accepts the amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. ANDREWS. I appreciate the Senator's accepting the amendment.

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

The amendment (No. 3048) was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 3049

(Purpose: To call for a stronger response to the Daniloff arrest)

Mr. MOYNIHAN. Mr. President, I send an amendment to the desk for myself, Mr. HUMPHREY, and Mr. DOLE, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for himself, Mr. HUMPHREY, and Mr. DOLE, proposes an amendment numbered 3049.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . (a) FINDINGS.—The Senate finds that—

(1) On August 30, 1986, Nicholas Daniloff was arrested, apparently in response to the arrest of the Soviet spy Gennadi F. Zakharov;

(2) On September 5, 1986, President Reagan sent a message to Soviet General Secretary Gorbachev offering the President's personal assurance that Mr. Daniloff was not a spy;

(3) Despite the President's assurances, the Soviet Union indicted Mr. Daniloff on September 7, 1986;

(4) The Soviet Union demonstrated an unprecedented disregared for the word of a United States President, while continuing to blatantly distort and conceal the facts surrounding the detention of Mr. Daniloff;

(5) Such mendacity jeopardizes the furtherance of any constructive relationship between the United States and the Soviet Union; and

(6) Hundreds of Soviet espionage agents operate at the United Nations, under cover of the Soviet mission to the United Nations and as members of the Secretariat of the United Nations.

(B) The Senate hereby—

(1) Declares that the Soviet action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to their responsibilities and commitments under any international or bilateral agreement.

(2) Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff.

(3) Calls on the President to condition his agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

(5) Calls on the President to demand that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of Articles 100, Section 2, of the United Nations Charter.

Mr. MOYNIHAN. Mr. President, this is a straightforward amendment which has been discussed in various ways on the floor for the past 2 weeks, during which the Senate has been looking for an occasion to express its despair.

□ 1930

The Senate has been seeking an opportunity to express its dismay at the KGB's arrest and indictment of Nicholas Daniloff in Moscow on a clearly fabricated charge of espionage, the first such event since the era of Stalin in our relationship, and to express equal dismay at one of the most extraordinary repudiations of our President we have seen from a Soviet leader in this whole area of our relations.

The President of the United States personally declared to Secretary Gorbachev that Mr. Daniloff was in no way connected with our intelligence agencies as an agent. Secretary Gorbachev's response was to escalate the crisis by indicting Mr. Daniloff on espionage charges, followed by Mr. Gorbachev's personal statement that Mr. Daniloff was a spy who had been caught redhanded.

We ask that the President maintain his staunch position in this regard, that he condition any meeting at the summit with Mr. Gorbachev on Mr. Daniloff's freedom, that he put an end to any discussion of new economic or trade relations with the Soviets until Mr. Daniloff is free, and, finally, that he insist that the Soviets abide by the United Nation's Charter and take their intelligence agents out of the United Nations Secretariat.

Mr. President, I yield the floor to my colleague, Mr. HUMPHREY, who has joined me in this matter throughout.

The PRESIDING OFFICER. Is the Senator from New Hampshire seeking recognition? The Senator from New Hampshire.

Mr. HUMPHREY. May we truly have order, Mr. President?

The PRESIDING OFFICER. The Senator is correct.

Mr. HUMPHREY. Mr. President, the drug bill is very, very important but the hostage holding by Moscow of American citizen Nicholas Daniloff makes it imperative, it seems to this Senator, that we consider this matter that we sought to consider such to bring to the floor for over a week. Indeed, it is more imperative than ever because, according to press stories in recent days, the last day or two, including one in the Washington Times, the Soviet Foreign Minister Shevardnadze is almost setting a deadline, if you will, for the resolution of this matter.

Mr. Shevardnadze is quoted by the Washington Times as saying his departure for Ottawa this coming Tuesday represents a sort of deadline by which time the President of the United States had better come to terms with the Soviet Union in this matter.

Mr. President, I think Mr. Shevardnadze and, indeed, Mr. Gorbachev simply do not understand the gravity of the situation which they have precipitated, and it is not hard to understand why they do not understand. It is because the Soviet tradition, the Soviet history, the Soviet practice has been to ignore the rights, to trample on the rights, of individual Soviet citizens.

The Soviet Government has wiped out literally millions of its citizens for the convenience of the state or the party, if you will, and that goes on today. Millions of citizens languish in jails to suit the convenience of the Soviet state and the party.

So they simply do not understand why Americans would get so excited about one single itty-bitty American citizen.

They have to be made to understand that we have a different system of values, that in this country under our Constitution each citizen has every right to protection of his rights and to the protection by the Government as have 100 million citizens.

So it is my contention, Mr. President, that we will help President Reagan impress upon the Soviet Government the gravity of the situation, the imperative this Government has to protect the rights of Mr. Daniloff and the rather little latitude there is for the President in negotiating this matter.

Mr. President, I think we will augment the President's case, we will buttress his case. To what extent it is hard to say. By itself this amendment which is in the form of a resolution, except it does not have a resolve clause—by itself we know the words of the Senate are not going to carry the day, but we hope that this on top of other evidence will press the Soviets and bring into clearer focus for them the circumstances of this unfortunate case and bring about a just and early resolution such that our fellow citizen Nicholas Daniloff will be freed and returned very soon.

Mr. President, I conclude by ticking off the five principal points of this amendment.

(1) Declares that the Soviet action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to their responsibilities and commitments under any international or bilateral agreement.

(2) Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff.

This is most important—

(3) Calls on the President to condition his agreement to a summit meeting with Secre-

tary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

(5) Calls on the President to demand that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of Articles 100, Section 2, of the United Nations Charter.

I would think this is an uncontroversial proposal in all of its five points.

Mr. President, may I simply state in closing that the stronger the vote, and I will ask for a rollcall vote, the stronger the vote, the stronger the message and the more help we will be to the President in resolving this thorny problem.

I thank the Chair.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I support the amendment offered by the distinguished Senators from New Hampshire and New York on the Daniloff case.

In doing, so, I want to commend those two Senators for bringing their resolution to the floor. We've been working with them for more than a week to do just that. So I'm pleased we are finally dealing with this issue in legislation.

Let me say, also, that it is my understanding that both of those Senators want a strong statement on Daniloff, and that the Senator from New Hampshire, at least, would welcome some additional language to strengthen his resolution. But he, quite understandably, wanted to attract the greatest possible vote on this matter and to get it to the floor as soon as possible, and so chose to go with the version he has now offered.

I certainly wish the language could be toughened up even more. We need a resolution that is as strong as our feelings about this matter.

The message I would like to see sent is that there can be no new initiatives or breakthroughs in our relations with the Soviet Union in any sphere until Daniloff is given unconditional permission to depart that country. To put it another way, I want to make clear that we consider the freedom, rights, and safety of an American citizen, whether that citizen happens to be in Moscow or wherever, as being at the absolute top of our agenda of national interests. Nothing should take higher priority for our Government than doing everything it can to protect American citizens. The Daniloff case is the top item on our agenda. When that is settled, then we can get on with other things. Until it is, then we can't.

The resolution before us does help send this kind of message. For that reason I welcome and support it, even while expressing the hope we could be even stronger in our language.

LET'S PUT TEETH IN THIS RESOLUTION

And let me add just one final word. There has been a lot of tough talk on this matter from a lot of people. And a lot of suggestions that we do this or that—stop grain sales or whatever. But when you try to get some of these people to do something really meaningful, to put some teeth in our message, then we start to hear all the excuses—all the reasons why we have to be careful or judicious or diplomatic or some other codeword for doing nothing.

Well, time is up for that tack. It's time now to act—to vote on something that shows we really mean business. That shows we really put the freedom and safety of Americans at the top of our agenda.

Mr. President, the Humphrey-Moynihan resolution is the best available vehicle to make that statement, so I will vote for it.

Mr. THURMOND. Mr. President, I ask unanimous consent to be added as a cosponsor of the amendment.

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

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, because we have not been able to obtain a copy of the amendment—I just have it. Never mind. I withdraw my objection.

Mr. LEAHY. Mr. President, I will not delay matters here at all. I would hope that the Senator from New York and the Senator from New Hampshire noted the passage earlier this week by the Senate of Leahy-Cohen II.

The Leahy-Cohen law that passed last year and has been signed into law by the President says that the United States and the Soviet Union shall have equivalency in their diplomatic missions and something that would require the Soviets to come in line with us to draw down substantially from their mission here in the United States. It is now in about a 3-to-2 ratio. There is about a 3-year time limit to put this into play.

Senator COHEN and I have both written to the Secretary of State. Senator COHEN and I have written to the Secretary of State and recommended that he notify the Soviet Union that if Nicholas Daniloff is not released immediately and unconditionally then the United States instead of taking 3 years to implement Leahy-Cohen would do it in a much more rapid period of time.

That would require a very substantial number, perhaps as many as 100 Soviets to leave immediately.

Now, this week earlier, the Senate unanimously passed Leahy-Cohen II, which is in the intelligence authorization, in the open part of it, discussed by Senator COHEN and I at the time it came up here. That, I have reason to believe, will be in the final conference report which will go to the President, and I understand will be signed into law by the President, which once in law would require the Soviet Union not only not to be able to bring back the 25 they now have in the U.N. mission, but they would have another 50 to 75 leave.

I mention this only, and I must say that the distinguished Senator from New York was one of those who strongly supported Leahy-Cohen I, and even back when before it was that, because I hope the administration has taken note of it and others have.

Under the law which passed the U.S. Senate this week, the one that I have every reason to believe will eventually be signed into law by the President, there is no room to negotiate for those 25 Soviets to come back. They are gone. And in fact, once this law goes into effect, another as many as 50 to 75 from the U.N. mission will still have to leave to reach the equivalence that we have talked about.

So I notice there has been a lot of speculation in the press and among Members of Congress and all of that, whether some of the 25 Soviets might come back, which ones they might be, and which ones they will not be.

The fact of the matter is under Leahy-Cohen they go, another 50 go, from the U.N. missions and as much as a third of the normal Soviet diplomatic mission will over the next 3 years have to leave to bring into equivalency.

This is not retaliation, this is nothing other than just following what is in the law.

I want my colleagues to be well aware of that.

SEVERAL SENATORS. Vote! Vote!

Mr. MOYNIHAN. Mr. President, I believe the Senator from Rhode Island wishes to speak.

The PRESIDING OFFICER. The Chair did not hear the Senator's remark or question.

Mr. MOYNIHAN. Mr. President, I said I believe the distinguished Senator from Rhode Island wishes to speak.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, in general this amendment is a fine one and good idea. But, there is one sentence in it that concerns me. That is sentence No. 3. It calls on the President to condition the agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

□ 1940

I think we all agree that the arrest of Mr. Daniloff is dreadful and wrong and an improper action on the part of the Soviets. There is no question about it. But there are other problems that we are dealing with in the world today as well. And the most important problem area that we have today, the most important area of vital concern to us all, is that of arms control and this means moving on with some method of communication between our two sides, such as a summit, and some method of getting a grip on these weapons.

I believe to try to relate the Daniloff release to this much larger issue of the summit is a very bad mistake. Daniloff himself said he hoped he would not be used as an excuse to postpone a summit meeting.

I am not sure what the attitude is of the administration. But, I would be surprised if they would like to see the President lose his freedom to negotiate with the Soviets and be denied the opportunity to a summit meeting because of an action on the part of the Senate. To my mind this is also too important an issue to decide this way, rather hastily, as an amendment on the drug bill.

I would very much hope that it would not pass at this time. I see real harm in calling on the President to condition his agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

Mr. HUMPHREY. Mr. President, I assure my colleagues I will be brief. The declaratory statement to which the Senator from Rhode Island refers, in plain English, says "No Daniloff, no summit." That is what we mean to say and that is what we have said. It is a clear choice for Senators. On that basis, we ask them to make the choice.

Mr. MOYNIHAN. Might I just make a final observation. Those who wish to see the relations between the Soviet Union and the United States improve must also wish to see the Soviet Union understand the principles of American national life which the distinguished Senator from New Hampshire set forth with such clarity. Absent that understanding of such fundamental principles, there can be no superstructure of understanding. We want both those things and we urge our colleagues to support this amendment. We have no doubt in our minds that the President would wish us to have the Senate go on record in this way.

Mr. LEAHY. Will the Senator from New York yield for a question?

Mr. MOYNIHAN. I am happy to yield.

Mr. LEAHY. Mr. President, I wonder if the Senator from New York could advise the Senator from Vermont—and I ask this question because the Senator from Vermont has long been one who has stated we should not condition arms control negotiations and arms control agreements on matters such as Daniloff—does this resolution condition the ongoing arms control agreements in Geneva upon the release of Mr. Daniloff?

Mr. MOYNIHAN. I am happy to respond to the distinguished Senator and vice chairman of the Intelligence Committee to say the answer is no; in no way does this amendment address itself to the ongoing arms negotiations nor indeed to any arms agreement that might be reached in the course of those negotiations.

Mr. LEAHY. Would the Senator from Vermont be correct in reading down through this—and I must admit that this seems unlikely in the arena of tensions created by the arrest of Mr. Daniloff—but is there anything here that would tell the President of the United States that he would not be able to initial an agreement if the chance of an agreement acceptable to the United States in arms control were to come out of Geneva?

Mr. MOYNIHAN. I say to my friend, I believe it would be unconstitutional for the Senate to instruct the President on what he may or may not do. Whether we subsequently approve a treaty is our constitutional responsibility. But the Senator may be assured that in no way does this either instruct or inhibit the President's action with respect to arms control.

Mr. LEAHY. I anticipated, in asking the question, that the distinguished Senator from New York would have that response, he having had more diplomatic experience in that regard than the Senator from Vermont and most of us here. The answer is what I anticipated and is most acceptable and I appreciate it.

Mr. MOYNIHAN. Mr. President, we move the question.

Mr. LEVIN. Mr. President, I may have missed the answer to a question from the Senator from Rhode Island, but I am wondering if I could ask my friend from New York a question. Has the State Department or the White House given their comment on this resolution? Do we know what their position is?

Mr. MOYNIHAN. May I say to my friend from Michigan that the Executive does not oppose this matter. They take no stance. They take no position. They thought it was a proper decision for the Senate to make.

Mr. LEVIN. Does this language in paragraph 3, which calls on the President to condition his agreement to a summit meeting on the prompt return of Mr. Daniloff from the Soviet Union, is this saying that the Senate urges the President not to agree to meet with Mr. Gorbachev to discuss the Daniloff affair?

Mr. MOYNIHAN. As my friend, my colleague in this matter, the distinguished Senator from New Hampshire said, the answer to your question, my friend from Michigan, is yes.

Mr. LEVIN. So that I am very clear on it, we would oppose Reagan and Gorbachev meeting to discuss the release of Daniloff?

Mr. MOYNIHAN. Mr. President, might I say, I think the Senator from New Hampshire might be asked to address this matter. I cannot imagine the President would.

Mr. HUMPHREY. If I may respond, it is hard to imagine a meeting between the President and the General Secretary of the Communist Party of the Soviet Union getting together without that being a summit. Clearly, in paragraph 3, we call upon the President—that is all we are doing; we have no means to compel him, obviously—calling upon the President to condition his agreement to a summit meeting on the prompt return of Mr. Daniloff. The language is clear and we mean exactly what it says.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. I will be happy to yield to my friend from Virginia in a moment or right now.

I just want to get a clear answer to that question. If the President of the United States said that he has agreed to a summit with Mr. Gorbachev and there are three items on the agenda of that summit—the first one is the unconditional release of Daniloff; the second one is the release or the permission to leave the Soviet Union of hundreds of thousands, indeed, perhaps more, people who want to leave the Soviet Union but who cannot; and the third thing is arms control—that this resolution puts us on record as opposing that agenda and opposing the President even going to that kind of summit? That is the impact of this resolution, as I understand it; is that correct?

Mr. HUMPHREY. May I respond?

Mr. LEVIN. Sure.

Mr. HUMPHREY. I think the Senator, particularly with respect to his second point, puts forth a highly unlikely hypothetical; indeed, an absurd hypothetical.

We are saying the President should not meet with Mr. Gorbachev until Mr. Daniloff is returned.

Mr. LEVIN. If I could just press for a direct answer to this question: If the President announced tomorrow that he has reached an agenda in a summit and the agenda is made up of a number of items and the first item on that agenda is the unconditional release of Mr. Daniloff, with a number of other items on that agenda, this resolution puts us on record as opposing the President going to that summit; is that correct?

Mr. HUMPHREY. I will answer the Senator's question directly, but let me first preface it by saying that this Senator believes it would be highly improper and unseemly for the President of the United States to meet with Mr. Gorbachev while Daniloff continues to be held hostage. The direct answer to the Senator's question is, yes.

Mr. LEVIN. I thank my friend from New Hampshire and I yield the floor.

Mr. WARNER. Mr. President, I think my question has been answered. In other words, if Daniloff is not back in the United States, there should be no summit?

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Mr. HUMPHREY. As I said earlier, and I say to my colleague from Virginia, no Daniloff, no summit.

Mr. WARNER. Which means that the summit might afford the President the opportunity to explore the options to bring him back, and the Senator precludes the President from even giving that opportunity a chance.

Mr. MOYNIHAN. Might I respond because we are together in one view on that matter? We are asking that the Senate support the declared intention of the President. If in his own judgment a situation of extraordinary opportunity arises in which he wishes not to take or accept our urging, he is free to do so. He is the President. But it is our view he would not, and that he ought not.

Mr. LEVIN. Mr. President, I want to see the release of Nicholas Daniloff from Soviet custody just as much as anyone else in this Chamber. It is for that reason that I am voting against the Moynihan amendment, which conditions a summit between President Reagan and General Secretary Gorbachev on the release of Nicholas Daniloff. This sense of the Senate resolution is so tightly drawn that it could create an obstacle to his release because it would prohibit the President from attending a summit, even if the first item on the summit's agenda was the release of Daniloff. This resolution would, thus, tie the President's hands, not increase his power to obtain the release of Daniloff.

I agree that the President should use the possibility of a summit as leverage to obtain Daniloff's release. However, we should not complicate his efforts in a way which might limit that leverage itself. In fact, if the President has an agreement prior to a summit that Daniloff would be released shortly after that summit, then a resolution prohibiting him from attending that summit, would be, in effect, a "Keep Daniloff A Hostage Resolution."

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from New York. On the question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Washington [Mr. GORTON], the Senator from South Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

The PRESIDING OFFICER (Mr. GRASSLEY). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 57, nays 29, as follows:

[Rollcall Vote No. 298 Leg.]

YEAS—57

Biden	Gore	McConnell
Boschwitz	Gramm	Mitchell
Bradley	Hatch	Moynihan
Broyhill	Hatfield	Murkowski
Bumpers	Hawkins	Nickles
Byrd	Hecht	Nunn
Chafee	Heflin	Packwood
Chiles	Heinz	Riegle
Cohen	Helms	Rockefeller
D'Amato	Hollings	Rudman
Danforth	Humphrey	Sarbanes
DeConcini	Johnston	Sasser
Denton	Kassebaum	Simpson
Dixon	Kasten	Stennis
Dole	Lautenberg	Symms
Domenici	Long	Thurmond
Ford	Lugar	Trible
Glenn	Mattingly	Wilson
Goldwater	McClure	Zorinsky

NAYS—29

Abdnor	Exon	Melcher
Andrews	Grassley	Metzenbaum
Baucus	Harkin	Pell
Bingaman	Hart	Proxmire
Burdick	Inouye	Roth
Cranston	Laxalt	Specter
Dodd	Leahy	Stevens
Durenberger	Levin	Warner
Eagleton	Mathias	Weicker
Evans	Matsunaga	

NOT VOTING—14

Armstrong	Gorton	Quayle
Bentsen	Kennedy	Simon
Boren	Kerry	Stafford
Cochran	Pressler	Wallop
Garn	Pryor	

So the amendment (No. 3049) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BURDICK. Mr. President, I would like to explain my vote on the Moynihan-Humphrey amendment to H.R. 5484. The amendment was called up without my notice, and the voting was in progress when I learned of it.

The amendment contains the following language:

(B) The Senate hereby—

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

I voted "No" on the amendment. I think it is unwise to terminate the sales of grain to the Soviet Union on this issue. A similar attempt was made under the Carter administration, it was a mistake then and it is a mistake now. This action will not punish the Soviets, but will simply drive them to other grain suppliers.

Mr. MURKOWSKI addressed the Chair.

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

AMENDMENT NO. 3050

(Purpose: To exempt certain maritime operations from the restrictions regarding participation in foreign police arrest actions)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 3050.

Mr. MURKOWSKI. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

In title II, section 08, strike out in paragraph (3) "paragraph" and inserting in lieu thereof "paragraphs."

In title II, at the end of section 08, strike out the quotation marks and the second period.

In title II, at the end of section 08, add the following new paragraph:

"(4) With the agreement of a foreign country, paragraph (1) shall not apply to maritime law enforcement operations in the territorial sea of such country.".

Mr. DOLE. Mr. President, I know a lot of Members would like to be out of here and so would I. We are making very good progress. I hope, particularly where amendments are going to be accepted, we can move very quickly and that we not get into a lot of extraneous amendments that are not germane. I hope we can stay here. The last vote was 7½ minutes over the time. We are going to start blowing

the whistle at the end of 15 minutes now.

Mr. METZENBAUM. Will the majority leader yield for an observation?

Mr. DOLE. Yes, Mr. President.

Mr. METZENBAUM. I think there has been an effort, as far as I can see, to avoid the highly controversial issues. It is now my understanding that there are certain Members who are insisting, within their rights, to offer some very highly controversial amendments. I think it should be pointed out that if that were to develop, we would really get bogged down on this drug bill. The majority leader and others on both sides of the aisle have given great leadership on this bill, but if we get into really controversial issues, there is no question that there is going to be a lot of debate.

I hope the majority leader will use his persuasive powers to see that we not get into that kind of situation because many of us want to be helpful on this bill, but we also have some strong feelings on certain issues.

Mr. GOLDWATER. Mr. President, will the majority leader yield for an observation?

Mr. DOLE. I am happy to yield.

Mr. GOLDWATER. I inform the majority leader that one of the coming amendments, as I understand it, will be the Hunter amendment coming over from the House. I think I am safe in saying if that amendment is offered, some of us will talk all night.

Mr. BIDEN. Mr. President, will the majority leader yield?

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. BIDEN. Will the Senator yield for an observation?

Mr. MURKOWSKI. I am happy to yield.

Mr. BIDEN. I say to my friend from Arizona that I believe we can, in fact, take all the amendments from the so-called Hunter amendment to the death penalty amendment and in fact be out of here and have a drug bill, have a drug bill that is of some consequence, as long as we all do not spend the rest of the night attempting to figure out how we can make it politically difficult for one another to, in fact, vote the remainder of the night.

There is an essence of an agreement here. We have a bill of significant consequence which, in fact, is about ready to move. There are only, as best this Senator can count, six controversial amendments, all of which, I believe, but one have an agreement that they will be withheld.

If, in fact, any one is not withheld, then, then obviously, no one will withhold. So I urge my colleagues to do their level best to do something about the drug problem because, as I understand it, we are in a position that if we do not finish tonight, we will not be back on this bill until sometime Wednesday. We have, I am told, at that time everything from the apartheid override vote to the impeachment of a Federal judge still on the docket. I believe we can finish it, I urge my colleagues.

I thank my friend from Alaska for yielding, but I urge my colleagues who are the major sponsors of any of those six or seven amendments to withhold introduction, withhold their tempers, withhold everything for a few minutes to see if, in fact, we might not be able to work something out here.

I thank my friend from Alaska.

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Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. MURKOWSKI. I yield without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, I would just like to make this comment in connection with all the discussions that have taken place. Several here who have spent most of the time today discussing issues, including one of my warm friends who was allotted 3 hours earlier today, now does not want some of us to discuss issues we consider vitally important if you want to address the question of drug interdiction in the United States.

It is true that I have sent to the desk with cosponsors of Senator DECONCINI, Senator HAWKINS, Senator MATTINGLY, and Senator D'AMATO a refinement of the Hunter amendment. It is a very substantial refinement of that amendment. I would simply like to say this to the Senate. Last year the House offered us a DOD authorization bill that moderately amended posse comitatus to use military hardware in connection with drug interdiction. We took it out last year.

This year they passed the Hunter amendment, much stronger than what I want to talk about here, if you will let me debate it shortly, significantly stronger than what I want to do. I would suggest that the attitude of the Senate is rather delicate on this subject matter. I have the posse comitatus law here and it is a very simple law. It says very clearly that if we want to permit the President or the Government to do anything in this area, we have to do something to amend the posse comitatus law. Now, if the Senate does not want to discuss that subject matter at all, I just want to say that so far as this Senator is concerned, you have done a lot of fine things tonight but you have not done the necessary bottom-line, important thing that you have to do to address this question of drug interdiction. I will just tell you one thing that happened to me years ago when I was in the Illinois Legislature and we were passing all kinds of new mandatory sentencing laws on crimes in Illinois. Mayor Richard J. Daly made a speech one night and what he said was, "All I need is more policemen on the streets of Chicago and I can take care of crime in Chicago."

You can do all these fancy things and if you do not give the military some powers and make some amendments in posse comitatus, you are not going to do the final necessary thing you have to do tonight.

I would like to take some time to discuss that. Some of my colleagues would like to discuss it.

Mr. DOLE. Regular order, Mr. President.

Mr. DIXON. I have an amendment at the desk and expect to call for its consideration unless otherwise dissuaded.

The PRESIDING OFFICER (Mr. GRASSLEY). Regular order has been called for. The Senator from Alaska.

Mr. MURKOWSKI. I can assure my colleagues that my amendment will probably take less time than the comments of my friend from Illinois.

Mr. President, as a former member of the Coast Guard in Alaska, I'm pleased to offer this amendment.

This amendment exempts the Coast Guard from the restrictions of the Mansfield amendment as modified by this bill. It will allow the Coast Guard, with the consent of another nation, to enter the territorial waters of that nation to directly enforce U.S. drug trafficking laws. In other words, it will permit the Coast Guard to make arrests—rather than ask foreign officials to make those arrests.

This amendment permits the U.S. Coast Guard to participate in cooperative enforcement activities abroad to assist foreign counterparts in controlling narcotic traffic affecting the United States. Because of restrictions imposed by the Mansfield amendment the Coast Guard has been hindered in carrying out its drug interdiction responsibilities. The Mansfield amendment has been interpreted as permitting the Coast Guard to act alone in foreign waters, with the consent of the foreign sovereign, to enforce U.S. law. However, the Coast Guard could not directly assist or arrest foreign personnel in the enforcement of their laws. Under these restrictions, any joint operation or training in foreign territorial waters is hindered significantly. I submit for the record two cases where the interpretation of the Mansfield Act, as amended, has stymied Coast Guard operations.

Mr. President, if we are serious about this war against drug abuse we must give our law enforcement officials the ability to assist their foreign counterparts in complying with the 1961 single convention on narcotic drugs. That convention requires that parties "assist each other in cam-

paigns against the illicit traffic of narcotic drugs."

I share the concern of my colleagues that American law enforcement officials not become inappropriately involved in the internal affairs of soverign foreign nations. To allay concerns about the impact my amendment might raise in this regard, I will outline the process the Coast Guard must go through before engaging in enforcement action in the territorial waters of another nation.

When the Coast Guard encounters a foreign vessel they suspect to be engaged in narcotics trafficking, they follow procedures for dealing with nonmilitary incidents established by Presidental directive 27. That directive requires the Coast Guard to contact the Department of State and the Department of Justice. The case is discussed to determine if the Coast Guard has a valid reason to pursue the investigation. If both the Justice Department and the State Department agree, the Department of State must contact the flag state of the vessel to get permission to proceed. I also add that the government in whose territorial water the Coast Guard is located must also have agreed to this type of operation.

I believe the process just outlined, adequately protects the Coast Guard from becoming inappropriately involved in the internal affairs of foreign nations.

I urge my colleagues to support this amendment. It will significantly enhance the Coast Guard's drug interdiction capabilities.

Mr. President, it is my understanding that this amendment has been accepted by the administration, by the Justice Department, by the Coast Guard, and it has been accepted by both sides. I ask unanimous consent to add Senator Hawkins as a cosponsor at this time.

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

Any further discussion?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I would like to be added as a cosponsor and commend the Senator from Alaska for his excellent amendment.

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

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. We are willing to accept the amendment.

The PRESIDING OFFICER. Is there any further discussion?

Mr. MURKOWSKI. I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment by the Senator from Alaska.

The amendment (No. 3050) was agreed to.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have an amendment that I am going to send to the desk and ask for its immediate consideration.

Mr. MURKOWSKI. I wonder if my colleague from New Mexico will yield.

I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3051

(Purpose: To increase funds for treatment)

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I understand we are supposed to rotate.

Mr. METZENBAUM. Mr. President, I think that is the understanding. Mr. President.

The PRESIDING OFFICER. The Senator from Ohio is correct, but the Senator from Illinois was seeking the floor. He did not ask for recognition of the Chair first but I was going to call on the Senator from Illinois.

Mr. METZENBAUM. I think I have a noncontroversial amendment we are prepared to accept.

The PRESIDING OFFICER. The Senator from Ohio is recognized because he addressed the Chair first.

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3051:

In section 4002(a)(1), strike out "$675,000,000" and insert in lieu thereof "$736,000,000".

In section 4002(a)(2), strike out "$136,000,000" and insert in lieu thereof "$186,000,000".

Mr. METZENBAUM. Mr. President, the amendment which I have sent to the desk provides an additional $50 million for drug abuse treatment programs under title IV of the bill. Currently, the bill authorizes $186 million for such programs, the House authorized $280 million.

Mr. President, It is clear that when we talk about demand reduction we must ensure that treatment programs are available for current drug abusers. If not, we can fund all the interdiction initiatives we want; we can call out the Army, the Air Force, and the Marines; we can propose tougher sentences for drug traffickers; but, Mr. President, we won't tackle the problem. We've got to get the current abusers off the drugs. It is simple as that.

In this morning's Wasington Post, we read about the delays which someone seeking help will encounter. At Second Genesis here in Washington, the backlog is so great that people seeking treatment must wait at least a month before they can get their names on a long waiting list. Phoenix House, the Nation's largest drug-treatment program, with facilities in New York and California, there is a 4-week wait before a person with a drug problem can even get an appointment for a diagnosis.

Mr. President there are an estimated 500,000 heroin addicts and 4 million regular users of cocaine, not to mention the millions who abuse other drugs including alcohol and prescription medicines.

It is estimated that out of the 24.5 million individuals who have a drug problem, only 272,042 are receiving treatment. It is also estimated that only 10 percent of those actively seeking treatment are able to enroll in a program.

Mr. Chairman, the infrastructure for drug abuse treatment exists. The centers are there. We know what works and what doesn't work. Currently only 19 percent of the money being spent for education and treatment comes from the Federal Government. It is our job to ensure that the Federal Government plays its part in combatting this problem. I urge my colleagues to support this amendment.

It is my understanding Senator HAWKINS, Senator THURMOND, Senator DOLE, and Senator BIDEN have all indicated their willingness to accept the amendment. I hope that is the case.

The PRESIDING OFFICER. Any further discussion on the amendment by the Senator from Ohio? If not, the question is on agreeing to the amendment.

The amendment (No. 3051) was agreed to.

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

Mr. DOMENICI. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3052

(Purpose: To establish the President's Media Commission on Drug Abuse)

Mr. DOMENICI. Mr. President, I send an amendment to the desk. My cosponsors are Senators HAWKINS, SPECTER, WILSON, MURKOWSKI, BINGAMAN, and TRIBLE. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself and others, proposes an amendment numbered 3052.

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

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

The amendment is as follows:

At the appropriate place, insert the following: TITLE —PRESIDENT'S MEDIA COMMISSION ON DRUG ABUSE

SEC. . SHORT TITLE.

This title may be cited as the "President's Media Commission on Drug Abuse title".

SEC. . ESTABLISHMENT

There is established a commission to be known as the President's Media Commission on Drug Abuse (hereinafter in this title referred to as the "Commission").

SEC. . DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent narcotic and psychotropic drug abuse;

(2) act as an administrative and coordinating body for the voluntary combination of resources of—

(A) television, radio, motion picture, and print media;

(B) the advertising industry; and

(C) the corporate sector of the United States; in order to assist the implementation of new programs and national strategies for dissemination of information intended to prevent narcotic and psychotropic drug abuse;

(3) produce and disseminate through the mass media public service announcements and advertisements aimed at preventing narcotic and psychotropic drug abuse.

(4) monitor the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. . MEMBERSHIP.

NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, and print media;

(3) the recording industry;

(4) other segments of the corporate sector of the United States; and

(5) experts in the prevention of narcotic and psychotropic drug abuse.

(b) TERMS.—(1) Except as provided in paragraphs (2), (3), and (4), members shall be appointed for terms of 3 years.

(2) Of the members first appointed—

(A) 4 shall be appointed for terms of 1 year;

(B) 4 shall be appointed for terms of 2 years; and

(C) 4 shall be appointed for terms of 3 years;

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(4) A member may serve after the expiration of his term until his successor has taken office.

(c) BASIC PAY AND EXPENSES.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. . MEETINGS.

(a) IN GENERAL.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d) VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members voting at a properly called meeting.

SEC. . DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR AND STAFF.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. . POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) MAILS.—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.

(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. . REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

Mr. DOMENICI. Mr. President, I think this is an amendment that most Senators will support. It has been cleared on both sides, and it simply does this: It establishes a Presidential Media Commission on Drug Abuse. I thought as I read this bill that one of the things missing was some way for us to tell the media of America that we want their help, and I did not want to mandate anything. I at one time thought maybe we should tell the networks that they ought to run more public service announcements against drugs in prime time, but I thought better of it. This amendment establishes a 12-member Commission made up of media people, broadcasters, publishers, advertisers, those who produce films and programs, and professionals in the field of drug abuse. They will pool private resources for the commission and they will have five jobs that I think are very important in terms of our ability to wage a war on drugs.

First, they will examine the antidrug efforts of radio, television, motion pictures, et cetera. Second, they will voluntarily coordinate the resources of the television, motion picture, magazine, advertising and other industries. Third, they will create antidrug public service announcements for broadcast and publication. Fourth, they will monitor the effectiveness of the program, and fifth, they will report annually to the President and to the Congress on the effectiveness of their program.

□ 2030

Frankly, I believe that this will have a very significant impact. The media of our country wants to help. This will permit them to coordinate their best efforts in a way that will assure that the communications industry will be involved in the war on drugs in the best possible way.

I do not believe that either the manager or the ranking minority member objects. I think this has a real chance of working.

Mr. THURMOND. Mr. President, we accept the amendment.

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

The amendment (No. 3052) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina is seeking the floor.

AMENDMENT NO. 3053

(Purpose: To eliminate the sugar quota of countries with governments involved in the trade of narcotics illegal in the United States, to maintain the sugar quota for specified countries, and for other purposes)

Mr. HELMS. Mr. President, I have an amendment, the cosponsors of which are Senators DODD, HATCH, HAWKINS, HECHT, HUMPHREY, INOUYE, KASSEBAUM, MELCHER, MCCLURE, SYMMS, THURMOND, TRIBLE, WILSON, and ZORINSKY.

Mr. President, the original amendment at the desk has been modified to include a provision which otherwise would have been offered as a separate amendment by the distinguished Senator from Montana [Mr. MELCHER] and the distinguished Senator from Utah [Mr. HATCH].

I now call up the amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself and others, proposes an amendment numbered 3053.

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

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

The amendment is as follows:

At the end of the bill, add the following:

SEC. —. (a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any major illicit drug producing country or major drug-transit country, as determined by the President, or;

(B) any foreign country that imports sugar produced in Cuba, determined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

SEC. —. Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

SEC. —. Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, sirups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;

(b) during any calendar year in which sugars, sirups, and molasses from any country are not subject to any rate of duty provided for in subpart A or part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, sirups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, sirups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, sirups, and molasses from the Republic of the Philippines.

Mr. HELMS. Mr. President, throughout the Third World, one of the most important subsidies granted by our country is our sugar quota. It guarantees selected sugar-producing countries a price for sugar three times the world price.

Unfortunately, the manner in which this lucrative subsidy is allocated may well be promoting drug traffic.

Under the current formula for allocating sugar quotas, countries which support illegal drug trade are treated exactly the same as are countries which are actively working to help us fight the drug trade.

Mr. President, this arrangement makes no sense. We should not reward those governments who are actively involved in peddling drugs. However, that is exactly what we are now doing with our sugar quota.

With this in mind, I am offering an amendment which aims to use our sugar quota policy in such a fashion so as to discourage the trade of illegal narcotics.

Specifically, this amendment would eliminate the quota of any major illicit drug producing country or major drug-transit country. By so doing, it will send a very clear message to those governments that would destroy our youth, and promote crime on our streets that they can not expect subsidies from the United States.

I might point out, Mr. President, that this restriction simply ties in with the limitations placed on foreign aid already included in the bill.

In light of the very active role Cuba is playing in promoting illegal drug trade, we should not subsidize the Cubans with our sugar quota either. With this in mind, the amendment would eliminate the quota of any country importing sugar produced in Cuba.

This provision assures that countries will not be able to continue the practice of using our quota to ship us Cuban sugar at three times the world price.

To combat the drug trade effectively, however, we need to do more than just penalize those governments who traffic in drugs—we need to help our friends discourage the drug trade.

How we allocate our sugar quota could well determine how successful we are in these efforts. Continual reductions in our sugar quota for the countries of the Caribbean Basin Initiative have encouraged anti-American feelings, and made it more attractive for persons within these countries to become involved in drug trade.

I hear this every day in my capacity as chairman of the Senate Agriculture Committee.

An article on the first page of Friday's Wall Street Journal discusses this very problem. The article is entitled "Cross Purposes: U.S. Sugar Quotas Impede U.S. Policies Toward Latin America," and reports that:

Decreased sugar exports to the U.S. have added to Barbados's unemployment woes and thereby indirectly helped elect a new left-leaning government strongly critical of the U.S. In Jamaica and St. Kitts-Nevis, as in Belize, unemployment caused by the sugar depression makes government efforts to persuade farmers not to grow marijuana all the more difficult.

Mr. President, I ask unanimous consent that the entire text of this article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. Mr. President, most of the countries in the Carribbean basin have governments which are not involved in drug traffic. It seems to me unfair and unwise to reduce the quota for these neighbors to the South whose economies are dependent on sugar at a time when their help is needed in fighting the drug war.

In passing the Caribbean Basin Initiative, Congress recognized that the economic situation of this region is of vital strategic importance to our Nation. Our current sugar quota policy runs counter to the efforts embodied in the CBI program.

With this in mind, this amendment would call for increasing the 1987 sugar quota for the Caribbean Basin Initiative countries to a level not less than the 1986 quota. In addition, at the behest of a number of my colleagues, and to reward countries who are facing hurdles implementing free-enterprise economic policies, the amendment similarly increases the quota for the Philippines and for Ecuador for the same period. If enacted, this amendment, as modified, would save the CBI countries an estimated $65 million, the Philippines an estimated $45 million, and Ecuador an estimated $2 million.

In addition, by restating the no-cost provisions of the 1985 farm bill, the amendment clarifies that it calls for no change in our domestic sugar program.

Mr. President, this amendment would redress the current situation whereby governments which encourage drug trade are rewarded with lucrative sugar quotas—and do so at no additional cost to taxpayer or consumer. I urge adoption of the amendment.

EXHIBIT 1

U.S. SUGAR QUOTAS IMPEDE U.S. POLICIES TOWARD LATIN AMERICA

(By Clifford Krauss)

LIBERTAD, Belize—Patricia Browne, the wife of a local sugar executive, wrote a letter to Nancy Reagan a year ago this month, warning of an impending setback in the war against drugs in this Central American country. Cuts in U.S. sugar import quotas, she predicted, were about to force the closing of a local sugar mill, which in turn would cause newly unemployed workers to grow marijuana.

Mrs. Browne asked Mrs. Reagan to use her influence to reduce U.S. sugar protectionism. She is still waiting for a reply.

The White House says it knows nothing of her letter. But today, as foretold, the area around Libertad is fast becoming a major new marijuana cultivation center. Most of the 500 or so other laid-off workers who aren't growing pot have migrated illegally to the U.S. in search of work.

Libertad, a sweltering town of wooden shacks set on stilts, illustrates the effects Washington's sugar policies are having on U.S. interests in the Caribbean and Central America. While President Reagan's heralded Caribbean Basin Initiative and other aid projects are designed to promote political and economic stability and to control illegal migration and drug trade, repeated sugar-quota cuts since 1982 have worked in the opposite direction. Regional leaders question how serious Washington is about dealing with their problems when the U.S. seems to take away with one hand what it gives with the other.

CATASTROPHIC POLICY

Carlos Morales Troncoso, the vice president of the Dominican Republic, says U.S. sugar policy has been "catastrophic." He estimates that the region's sugar producers have lost at least $300 million in export earnings since 1984 because of the quota cuts. Of the 1.7 million tons of sugar allowed to be imported to the U.S. this year, 11 Caribbean and Central American countries were allotted just 35% of the total. Robert L. Paarlberg, a Harvard University expert on international trade, calls U.S. sugar protectionism "a preposterous policy inimical to U.S. policy interests."

The effects of the U.S. sugar squeeze, which compounds the problems accompanying a world sugar price depressed since 1981 by European protectionism, vary from country to country. The U.S. pushed for land reform in El Salvador, but cuts in sugar imports are contributing to the financial failure of several cooperatives there. Decreased sugar exports to the U.S. have added to Barbados's unemployment woes and thereby indirectly helped elect a new left-leaning government strongly critical of the U.S. In Jamaica and St. Kitts-Nevis, as in Belize, unemployment caused by the sugar depression makes government efforts to persuade farmers not to grow marijuana all the more difficult. Overall, U.S. sugar policy has cost the region an estimated 130,000 jobs since 1984, according to Peter Laurie, Barbados's ambassador in Washington.

SOVIET BENEFITS

Washington's efforts to improve relations with Guyana, and to drive a wedge between that nation and Cuba, are complicated by the decrease in Guyana's sugar exports to the U.S. And the Soviet bloc benefits in other ways. The Soviet Union has significantly increased its non-Cuban Caribbean sugar trade to fill the trade vacuum. And, more important, Cuba made tens of millions of dollars in the past year by buying excess Caribbean sugar from brokers for re-export to the Soviet Union at highly favorable prices.

In alliance with other farm lobbies, U.S. sugar growers persuaded Congress in 1981 to set a minimum domestic price for raw sugar of about 20 cents (more than twice the world price at the time and more than three times the going price today). To protect the price without subsidizing the farmers directly out of the federal budget, President Reagan propounded the trade quotas, which Congress has subsequently cut several times. Without the quotas, the argument goes, the livelihoods of some 15,000 U.S. sugar-cane farmers would be in jeopardy.

CORN SIRUP INROADS

Over the years, the corn lobby has become the strongest advocate of the quotas. Suffering from a glut of corn on the market, U.S. corn farmers have been able to make up for some lost profit by producing high-fructose corn sirup, which is profitably sold to soft-drink bottlers because domestic sugar prices are propped up so much. Caribbean producers fear that the corn farmers, spurred by subsidies, will develop a way to crystallize their sirup and eventually supplant cane sugar.

("Given the stressful time in agriculture, the fructose market is one of the few bright spots we have," comments Alan Tank, the vice president of the National Corn Growers Association. He adds: "We simply say our domestic market must be equally important to the U.S. as the Caribbean Basin and as the sugar quota is to them.")

Sugar imports have been reduced year after year, with the 1.7 million-ton 1986 quota from all sources reduced from 2.4 million tons in 1985. If it hadn't been for White House and State Department pressure, as well as the lobbying efforts of Michael Deaver, the former Reagan aide and lobbyist for the 10-nation Caribbean Basin Initiative Sugar Group, Congress might well have cut this year's quotas even more. The 1987 quotas are due to be set in mid-December, and most analysts expect them to be reduced again.

The State Department goes to great lengths to compensate for a sugar policy it doesn't support. It lobbied in Congress for a clause in the 1985 farm bill that allows Washington to buy commodities such as rice, soybeans and wheat from domestic producers to grant to Caribbean countries so as to make amends for the damages of the sugar policy. But by flooding Caribbean markets and driving commodity prices down, the U.S. is making it more difficult for local farmers to replace sugar with those other crops. "It gets to be comical," says Richard Holwill, the deputy assistant secretary of state for the Caribbean. "It makes us look like damn fools when we go down there and preach free enterprise."

Foreign-policy issues aren't discussed much in rural Caribbean sugar areas; unemployment is the topic of the day.

As Nicolas Casasnova, the leader of the Dominican sugar planter's federation, drives through the rolling sugar plains in the eastern part of the Dominican Republic, skinny, bare-chested peasants jump out of the clumps of cane in front of his car to get his attention. From one pink and aqua clapboard hamlet to the next, peasants whistle and scream at Mr. Casasnova, pleading for work. He consoles them with pats on the back and, in jest, suggests they can always find a skiff captain to take them to Puerto Rico, from which they can sneak onto the U.S. mainland posing as Puerto Ricans.

PROD TOWARD COMMUNISM

In private, Mr. Casasnova turns serious and blames U.S. sugar protectionism for the contracting local economy. "If things keep going the way they are, the people will lose faith in democracy," he warns. "They'll be converted into Communists."

The Dominican Republic, the largest foreign supplier of sugar to the U.S., has suffered a direct loss of at least $75 million in foreign exchange at a time when Washington is encouraging Santo Domingo to meet its obligations in its $3.9 billion debt. From a 1982 export to the U.S. of 447,000 tons, the country's sugar quota this year was reduced to 278,000 tons.

Higher coffee prices, a booming tourist industry, lower oil prices and reduced interest rates have enabled the Dominican Republic to continue making its debt payments, but the government's State Sugar Council is bankrupt. Santo Domingo's coffers are being drained by subsidies it grants the public sugar company in order to keep the state's 12 sugar mills in operation.

Still, the State Sugar Council can't come up with sufficient funds to pay the country's 8,000 small and medium-sized private

cane farmers for their produce and owes them about $15 million. In turn, the cane farmers have been forced to lay off 20,000 of their 100,000 workers. There are few alternatives for the peasants than to migrate to the rancid slums of Santo Domingo or to the U.S. (Already one out of every seven Dominicans lives in the U.S., and officials say that illegal migration is picking up.)

SUGAR OR CATTLE

The U.S. Embassy in Santo Domingo is advising the government to diversify its economy; but that isn't easy. The soils of the eastern Dominican Republic are rocky and poor—only appropriate for sugar growing or cattle raising. While 20,000 acres of sugar land employs 5,000 workers, cattle raising provides only about 30 jobs on the same plot.

And the Dominican sugar situation is getting worse. President Joaquin Balaguer's new government is thinking about closing up to five of the mills as an economy measure.

The 2,300 workers at the Catarey sugar mill in Villa Altagracia are bracing for the worst. The sugar unions are mobilizing a campaign to put political pressure on the government. "You can be sure if the government tries to close the plant, they'll have to kill five or six of us in the streets first," says Zacarias Chacon, a 32-year-old union leader. Referring to the last time U.S. troops landed here to quell disturbances, he adds: "It would be 1965 all over again."

Inside the dank and cluttered plant, 19 workers take a break and talk of the future. Grumbling that to take jobs in citrus fields now being planted in the area would be a step down for them, 13 say they will try to go to the U.S. if the plant is closed. "If I find a [rubber] tube or skiff, I'm gone," bellows Lucas Medina, 25. "I already have a family there who'll be waiting for me on the beach."

A FARAWAY MILL

The sugar mill in Libertad, one of two in all of Belize, closed late last year, and the consequences to the local economy have been severe. Local planters must now spend extra money on fuel to transport their cane to a faraway mill, and by the time they get there, much of the cane has been dried out. There is also a multiplier effect: Local stores and discotheques have closed, and bankers complain that people are defaulting on their mortgages. But the factory workers have been hurt the most.

One unemployed worker, who used to earn $55 a week mixing herbicides at the sugar mill, now makes four times that planting marijuana on dry plots amid mangrove swamps. While he prunes the leaves of one four-foot-high lush plant, in preparation for his first major sale, he says he plans to add to his acreage in the coming months.

"A majority of us—those who didn't have the money to leave—are growing it," he says. "When I was working, I never do that." His guilty feelings about his new work are palpable. He says he isn't going to tell his wife about his new crop. "You think they'll ever open the plant again?" he wonders.

Mr. HELMS. Mr. President, I yield to the distinguished Senator from Montana, who will explain the portion of this amendment which was added at the request of the Senator from Montana and the Senator from Utah [Mr. HATCH].

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, my Philippine sugar quota addition to this amendment simply allows the Philippines as good a sugar quota as any of the other countries get and the same opportunities as other countries. It is sugar quota equity for the Philippines. It will be encouraging to both the Filipino people and their new government. It will give their very sluggish economy a shot in the arm and a chance for them to begin their recovery. It will provide import duty equity for Filipino sugar. They shall have the chance they deserve as our long-time friends and allies to start a new day of opportunity. The poor people of Negros, with their sugar fields unplanted, the sugar mills now closed, will know that help is coming and their work can be revived. Filipinos will know America cares.

This amendment allowing a larger share for the Philippines for the United States foreign sugar quota has been a long time coming. It is for them a chance to have recovery at the grassroots level, and it is the kind of help that President Aquino so eloquently and so graciously suggested that we undertake as friends of Filipinos.

I fully support the amendment. I assure my colleagues that it does no harm to U.S. domestic sugar quotas. It leaves them intact. U.S. sugar production will remain at the same level.

I hope the Senate adopts the amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr CHAFEE. Mr. President, I think we are making a mistake here tonight to get involved, in the middle of a drug bill, with sugar quotas. This is a subject that certainly none of us expected in connection with a drug bill.

I wish to ask a couple of questions of the sponsor of the measure.

The Senator discussed eliminating the quota of any major drug trafficking country. Is that decision made by the President?

Mr. HELMS. That is correct.

Mr. CHAFEE. Then, this goes way beyond that. It says that it eliminates the quota of any country that is taking sugar from Cuba, and this clearly has nothing to do with drugs. We are getting into an entirely new area that I think deserves far more study than we have given it here tonight.

So I hope that this amendment will not be accepted. The next amendment that would come along, I suppose, would deal with the import of shoes from the Caribbean nations.

□ 2040

Those countries that have been providing shoes and possibly purchasing some shoes from Cuba would not be able to export into the United States.

There are all kinds of ramifications to this, Mr. President. I think it is an unfortunate amendment to come up at half past 8 on Saturday night in connection with a drug bill.

Mr. HELMS. Mr. President, I can understand the concerns of the Senator, but let me explain further. The bill already limits other U.S. assistance to countries involved in drug trade.

Second, there is a loophole in existing law whereby countries are allowed to fill their quotas from Cuban sugar. The 1985 farm bill contains a provision included in the conference report which was intended to close this loophole, but due to a technicality it has not been effective.

Had it not been for this technical error there would be no need for this amendment.

According to the Foreign Agriculture Service, only one quota country still buys Cuban sugar, and that is Canada. However, under this legislation the Canadians could cease this practice and maintain their quota.

The question was raised by one of my colleagues, when we discussed the matter in the cloakroom, he said, "But, this amendment violates GATT."

The answer to his concern is that this amendment is no less consistent with GATT than the amendment this body passed on the South African sanctions bill transferring the South African sugar quota to the Philippines.

The Senator did not object to that violation of GATT.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there any further discussion on the amendment?

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

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. HELMS. I have yielded the floor.

Mr. DODD. Mr. President, briefly, I realize my good friend is concerned about the GATT. They are legitimate concerns to raise in an amendment like this.

Certainly, I do not know of any more effective means of saying to those nations who are directly involved and every bit of intelligence we have indicates that many of the countries who are involved in sugar production are also involved, if not involved, at least turning a blind eye and deaf ear to the activities in their country.

We can talk all we want about exercising leverage on those countries by cutting off aid or trade, but if you really want to make a difference and send a signal this evening to those countries involved in that activity, then the Senator from North Carolina has offered the proper amendment.

Certainly, I think a generous gesture to suggest that the Philippines might be the beneficiary of some of this is one I think even makes it more attractive. Nonetheless, even in the absence of that provision, I would support that amendment because I do think it sends that unequivocal, clear signal to those nations in our own hemisphere involved in this activity.

It is an appropriate place for this amendment on this particular bill dealing with drug interdiction, though I know many of the colleagues here sometimes wonder when they hear the name of Helms and Dodd on the amendment. I happen to think it is a good amendment.

He has my support. I hope it is adopted.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, may I ask my colleague from North Carolina a question about what this does for the Philippines?

I am very anxious to give some assistance to the Philippines. I hope we can do it before this session ends.

I would like a little explanation about what this amendment would do for the Philippines.

Mr. HELMS. Mr. President, let me get the figure from my file. There will not be any precise figures, as the Senator will understand, because much depends upon how the overall quota is determined. But it will give the Philippines an extra 40,000 to 70,000 ton quota for 1986 depending upon the final outcome of the South Africa sanctions bill.

Mr. NUNN. It will definitely increase the Philippine sugar quota?

Mr. HELMS. The able Senator is correct.

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

Mr. HELMS. In effect, this amendment as modified will raise the Philippine percentage overall quota from 13 to 27 percent.

The PRESIDING OFFICER. Is there any further discussion?

Mr. METZENBAUM. Mr. President, I do not understand some portions of this bill and I am inclined to agree with the Senator from Rhode Island. We find this amendment totally by surprise.

But there is some language in it that I would like to have the Senator from North Carolina be good enough to explain to me. It provides:

> The President shall—use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation . . .

The difficulty I am having with that is it does not seem to have anything at all to do with countries that are involved in drug trafficking. It does not seem to have anything to do with the Philippines. It seems to me to be a little bit out of the general purview.

Would the Senator from North Carolina, who is more familiar with this kind of legislation than the Senator from Ohio, be good enough to explain the significance of that first paragraph?

Mr. HELMS. I say to the Senator if he will yield to me, and I thank him, that the portion of the amendment to which he refers simply restates the 1985 farm bill which is already law.

Mr. METZENBAUM. That language is in the law?

Mr. HELMS. That is correct.

Mr. METZENBAUM. Then why is the Senator putting it in at this point since he is adding it as a new section, because at the very beginning of the bill he says, "At the end of the bill add the following," and then he is adding it. If it is already in the law, then why would the Senator be adding it?

Mr. HELMS. Simply, I will say to the Senator, to assure that the program is operated at no cost to the taxpayer.

Mr. METZENBAUM. Does it have any more significance than that it will be at no cost to the taxpayer? Is there something behond that that the Senator from North Carolina can advise me about?

Mr. HELMS. No, I say to my friend. The purpose is simply to assure that this amendment would not change the no-net cost provisions already in law.

Mr. METZENBAUM. And what about the second paragraph of that same subject, "to the extent possible subject to paragraph 4," and then it goes on?

I think the point that I am making is that the very point the Senator from Rhode Island made and that is it is a totally new subject, something we were not prepared for, and it very well might have a lot of merit to it but it has taken us totally by surprise at almost 9 o'clock in the evening and we just want to be certain when we wake up in the morning we do not find we enacted something that does more than we thought we were enacting, and I thought that was what some of the concern was about.

Mr. HELMS. The Senator need not be concerned about that. I frankly do not understand the Senator's question about the second paragraph on page 2. Perhaps it would be helpful if he will restate it.

Mr. METZENBAUM. In the first paragraph the Senator states paragraph (A) is merely a restatement of the present law.

Mr. HELMS. That is correct.

Mr. METZENBAUM. Then the second paragraph provides:

> (B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

My question to the Senator really is it seems to me he achieves his total objective with respect to the substance or thrust of his legislation without those two paragraphs. Therefore, I am asking why they are there.

Mr. HELMS. With all due respect to the Senator, and I respect him highly, the language is so clear to me that I do not understand his question about it.

But let me put it this way. It is simply a statement assuring that the overall quota will not be too large due to the increase to keep the sugar program from operating on a no-cost basis.

Mr. METZENBAUM. I do not have any desire to tie up this body.

Mr. HELMS. I do not try to confuse the Senator. The amendment is entirely consistent with the language in the 1985 Farm Bill.

Mr. MELCHER. Mr. President, will the Senator yield to me?

Mr. METZENBAUM. I yield.

Mr. MELCHER. I thank the Senator for yielding, Mr. President.

Might I just state that the second paragraph that the Senator from Ohio just read simply leaves the quota for importation of sugar at the present level.

Mr. HELMS. That is correct.

Mr. MELCHER. That is what we need to do to assure the Philippines and other countries what their quota is going to be for next year.

Mr. METZENBAUM. I am not going to tie up the Senate further, but I am very confused, and I am not sure that even though the Senator from North Carolina has been good enough to try to explain it to me as the Senator from North Carolina knows well, it is one of the prices we pay when we get a new subject suddenly on a bill where we did not expect that subject to be brought in.

Mr. HELMS. If the Senator will yield, let me say to him we are now referring to what we are trying constantly to try to produce—farm legislation. It is not easy.

I thank the Senator.

□ 2050

The PRESIDING OFFICER. Is there any further discussion?

Mr. CHAFEE. Mr. President, we have had a couple of ringing speeches here tonight about how this gets right at the subject we are concerned about and it is a way to get at the drug problem, and there is a lot of merit to that.

But, as you know, in this there is a part that has nothing to do at all with

drugs. "Any foreign country that imports sugar produced in Cuba," so on and so forth, that is a farm bill. That has nothing to do with drugs.

I do not think this is a proper place to bring that up. I wonder if the Senator insists on that section of his bill.

Mr. HELMS. Absolutely. I would insist on it because Cuba is the problem.

Mr. MELCHER. Will the Senator from Rhode Island yield to me?

Mr. CHAFEE. I will. I just asked a question of the Senator from North Carolina.

Mr. HELMS. There is no question about the orchestration of the drug traffic by Cuba. The loophole exists now and unless we close it with this amendment it is going to continue to exist.

The Senator from Connecticut, Mr. DODD, stated it absolutely correct. Cuba is the problem and we are getting at that cancer with this amendment.

Mr. MELCHER. Would the Senator yield now for a question?

Mr. CHAFEE. Yes.

Mr. MELCHER. The Senator from Rhode Island has twice asked a legitimate question about Cuba. But I think what might be confusing him is the fact of what some of us know, that by allowing importation of sugar we are allowing it at a price that is set at 18 cents, 12 cents a pound above what the world price of sugar is right now and what it was 6 months ago.

And for a country like Canada, or any other country, to buy sugar from Cuba at 6 cents per lb. helping them, and then taking that profit, seems to us to be a terrible travesty on spending taxpayers' money; and costing United States consumers' money; particularly it is wrong when they buy it for profit from Cuba, a country that we have reason to believe causes us a considerable amount of trouble.

Cuba has benefited and we do not like Canada or any other country buying from Cuba and then bringing the sugar in here and taking the profit of 12 cents a pound.

Mr. CHAFEE. Mr. President, there may be merit to that argument. But there is no question but what we have discussed sugar and farm bills on this floor every year, practically. In every farm bill, we have discussed sugar. And for this provision somehow not to have been dealt with there in the proper arena and to come up on a drug trafficking bill seems to me unfortunate.

I am not going to press it further, but when you do call for the vote, I would like it to be a voice vote and I would like to be recorded in opposition, Mr. President.

Mr. TRIBLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. TRIBLE. Mr. President, I would like to engage the Senator from North Carolina in a very brief colloquy. I would direct the Senator's attention to paragraph 1(A) of his amendment. I believe the language of that paragraph is overly broad.

The language of that paragraph says:

> Any major illicit drug producing country or major drug-transit country, as determined by the President.

My concern is that the language will apply to countries like Ecuador which is cooperating with the United States and, by the terms of this bill would otherwise benefit.

I would suggest that perhaps the Senator might substitute the following language which I think would achieve the full purposes of the Senator from North Carolina. That language would be:

> Any country which has a government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities defined in section 2002.

In other words——

Mr. HELMS. I understand exactly what the Senator is saying. I agree with him. I ask that the amendment be so modified.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. Does he request that modification?

Mr. HELMS. I do, Mr. President.

The PRESIDING OFFICER. The amendment, then, is modified according to the author's request. It is modified as the language submitted to the desk.

The amendment (No. 3053), as modified, reads as follows:

At the end of the bill, add the following:

Sec. . (a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any country which has a government involved in the trade of illicit narcotics or is failing to cooperate with the U.S. in narcotics enforcement activities as defined in section 2002, or;

(B) any foreign country that imports sugar produced in Cuba, determined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

At the end of the pending amendment add the following:

SEC. . Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

SEC. . Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, syrups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;

(b) during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines.

Mr. DANFORTH. Mr. President, I would like to ask the Senator from North Carolina if the second part of his amendment would have the effect—that is, the part of the amendment that is not directly dealing with the drug problem but is dealing with trying to create a secondary boycott against Cuban sugar—I wonder if the effect of that amendment would be to terminate the sugar quotas that we

now have allocated to Canada, Mexico, Costa Rica, Peru, and the Dominican Republic. It is my understanding that the effect of that second part of the amendment is that those five countries—Canada, Mexico, Costa Rica, Peru, and the Dominican Republic—would have their quotas terminated.

If that is correct, I am wondering if that is what we want to do on this drug bill. It seems to me that maybe the thrust of the amendment is pretty well handled in the first part of the amendment, which is the one that goes directly to the drug trafficking problem. But then, when we get to the area of the secondary boycott, we have created, as I understand it, direct problems under the General Agreement on Tariffs and Trade, and specifically problems for these five countries.

Mr. HELMS. In the first place, the countries that you have mentioned are cooperating with us. In the second place, I do not think that you would want the American taxpayer to continue to subsidize Cuban sugar at three times the market price. In the third place, only Canada is importing sugar from Cuba and reselling it in and to the United States.

MR. DANFORTH. Well, it is my understanding that they are cooperating with us with respect to the drug problem, which is the subject matter of this bill.

Mr. HELMS. Correct.

Mr. DANFORTH. And, with respect to any sugar that is exported from those countries to the United States, those exports are under certification that the sugar does not come from Cuba. My concern is that these countries are not exactly sound economically and we do have very real problems in Central America. I am concerned that we are treading in an area where we are, in a drug bill, cutting off a major source of income for these Central American countries.

Mr. HATCH. Will the Senator yield?

Mr. HELMS. Yes.

Mr. HATCH. As I understand it, the quota remains the same. The importance of this amendment is, it is going to help the Philippines. That is the real import of it. But you are talking about the GATT problem.

Mr. DANFORTH. Mr. President, if the Senator from Utah will yield—I do not know who has the floor—but responding to the Senator from Utah, my understanding of this portion of the amendment is that if these five countries are importing any sugar from Cuba, their allocation from the United States is terminated and that they, therefore, are unable to do business with us. I mean, it is a fine thing to help the Philippines—after Mrs. Aquino came here, I think all of us want to help the Philippines—but my concern is that, irrespective of any drug problem, or irrespective of any cooperation from these countries in trying to deal with the drug problem, what we are doing here is providing economic sanctions against Canada, Mexico, Costa Rica, Peru, and the Dominican Republic.

Mr. HATCH. If I could——

Mr. MELCHER. Will the Senator yield?

Mr. HELMS. Let me say to the Senator—and then I will yield, of course, to my friends from Utah and Montana—as long as the President certifies, as stipulated in this bill, that countries cease importing Cuban sugar, then these countries will not be affected at all.

Mr. DANFORTH. But these countries do import some sugar from Cuba. These countries do send some sugar, quite a lot of it, maybe, to the United States.

□ 2100

They certainly think that what they are importing from Cuba does not go to the United States. Granted, sugar is I guess fungible. But I am wondering if we want to alter the business practices, and the trade practices of friendly countries that are cooperating with us in the drug area in the drug bill if the effect of doing that is to impose economic sanctions on some countries that have real economic problems themselves and have been friendly to the United States.

Mr. HELMS. I say to my friend from Missouri, yes. They can import sugar from countries other than Cuba. I say again that I do not think the Senator wants to continue this process whereby the American taxpayers are subsidizing sugar produced in Cuba at three times the world market.

There is no problem in this regard since the huge world surplus enables countries to get sugar elsewhere. If they are unwilling to get it elsewhere, then I have no sympathy for them.

Mr. DODD. Will the Senator yield on that point?

Mr. HELMS. Yes.

Mr. DODD. It concerns the problem, but of the countries that the Senator has listed, only one country actually gets any sugar from Cuba. That is Canada. The Central American countries that the Senator mentions do not receive a single bale or pound of sugar from Cuba. So I say to my friend from Missouri that they would not be affected by that provision in the bill.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I do not intend to take too long. I commend the Senator from North Carolina for this amendment, as a cosponsor. This amendment eliminates the archaic sugar import quotas from the countries involved in trade of illegal drugs, or countries that import sugar from Cuba. Only one country is involved. Once these countries realize that there will be economic consequences of their acquiescence to drug trade, perhaps they will help us in our efforts to eliminate drugs. That is why this is such an important amendment.

This amendment will help the Philippines, among other countries. It will not cost the Federal Government a dime. The Philippines deserve our support. The Philippines should be encouraged to strengthen its economy to increase trade from the United States.

I commend the distinguished Senator from North Carolina for this amendment, and I hope the leaders of the bill will accept it.

The PRESIDING OFFICER. Is there any further discussion?

Mr. BIDEN. The amendment is acceptable on this side.

Mr. THURMOND. We have already accepted the amendment on this side.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 3053), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I rise today to offer my support for the bipartisan drug bill, H.R. 5484. I would first like to commend my many colleagues who have labored extensively on this measure. I think the Senator from Delaware, Mr. BIDEN, the minority leader, Mr. BYRD, the Senator from Florida, Mr. CHILES, and my friend from West Virginia, Mr. ROCKEFELLER on this side as well as the majority leader and the junior Senator from Florida, Mrs. HAWKINS, the Senator from New York, Mr. D'AMATO and the other Members who have contributed to this bill deserve our thanks. They have crafted a bipartisan bill which goes a long way in addressing a major problem in today's society.

As a Senator representing a border State I am acutely aware of the problems and difficulties that accompany illegal drug enforcement. Drug traffickers have developed complex and extensive networks to penetrate our borders and distribute their merchandise. But despite the recent rhetoric surrounding the drug problem, support for civilian drug enforcement authorities has not reflected the concern of the American public. This bill helps to rectify that situation.

And, as this bill recognizes, the supply of drugs is only one facet of the problem. In order to truly decrease the amount of substance abuse in our Nation, we need to attack not only the supply, but also the demand for drugs. The use of drugs among our youth has risen dramatically. Substance abuse is all too prevalent among students and young adults. Yet, we all know that substance abuse is not limited to the young. In fact, I think it took the tragic and unnecessary deaths of two promising young athletes to finally inspire this Nation to act on the drug problem. The simple fact is that large numbers of people, adults and youth, use and abuse drugs. Indeed, increased drug interdiction is necessary, but so is increased education and rehabilitation. Our youth need to know the dangers of substance use; our abusers need the opportunity to break their addictions. This bill provides much needed revenue to establish such education and rehabilitation programs.

Despite the necessity of this legislation, our haste to enact a drug bill before we adjourn this Congress raises some questions and some potential concerns. Are we acting to insure short-term political gain from a sudden and popularly recognized problem? Or are we making a commitment to address a serious social malaise? Drugs will not disappear because we pass a law. We must remember that we are talking about lives, that we are talking about health, that we are talking about the vitality of our population when we talk of drugs. This bill should represent the initial, not the final, step in our attempt to decrease our reliance on drugs. Particularly in education, our commitment must be continuous or we will face the risk of forfeiting all progress in decreasing substance abuse. Our colleague from New York, Senator MOYNIHAN, introduced a bill in the initial days of this Congress that addressed the drug issue. I was pleased to cosponsor that legislation and I am pleased that the bill before us now incorporates large parts of that measure. However, the footdragging that accompanied Senator MOYNIHAN'S proposal and the circumstances surrounding the intense interest in the legislation today worry me. Once the media attention fades, will congressional commitment wane proportionally? The fight against drugs will be long; we must recognize that and be ready to allocate the necessary resources over the course of the battle.

As a former attorney general of the State of New Mexico, I am very familiar with the problems of drug abuse. I spent a significant amount of my time as attorney general trying to help enforce and improve our State drug abuse laws. As a result, I welcome the action of the Congress in trying to assist these important local efforts. But let us make sure we maintain this commitment.

The bill before us is extensive. Among other provisions it authorizes an additional $115 million for the U.S. Customs Service for domestic drug enforcement and it earmarks additional appropriations for the U.S. Coast Guard and the Department of Defense for enhancement of drug interdiction assistance. The bill provides funds for more Drug Enforcement Agency personnel, more prosecutors, and more prisons so that convicted violators will not be released because of prison overcrowding. Additionally, $115 million is authorized in the form of grants to States to pursue further drug enforcement activities, while the measure establishes tougher penalties for individuals convicted of drug-related crimes.

The bill corrects a serious deficiency in our current treatment of the drug problem. The Federal Government now allocates only $3 million a year for drug abuse education. For a nation seriously committed to eradicating a problem, $3 million is strikingly inadequate.

H.R. 5484 provides $150 million for drug education—for programs aimed at the prevention of drug and alcohol abuse. Not only has the present administration, despite its rhetoric, provided only minimal funds for drug education, the amount of money for drug rehabilitation has also decreased in recent years. H.R. 5484, however, increases the authorization for the alcohol, drug abuse and mental health services block grant to $675 million. Of these funds, $125 million is reserved for State alcohol and drug abuse treatment programs.

This bill also includes an urgently needed subtitle to address the alcohol and substance abuse problem among the American Indian population. Alcohol and substance abuse is one of the most serious health and social problems facing Indian tribes today. The bill authorizes funds to establish much needed community-based rehabilitation and followup services for Indian youth who are alcohol or substance abusers. It provides for further education about alcohol and substance abuse for Indian youth and earmarks more resources for enhanced tribal law enforcement, including funds for training of tribal law enforcement and judiciary personnel and tougher penalties for drug violations on Indian lands.

I am also pleased that this measure has incorporated a variation of an idea that I suggested in S. 400, the Indian Health Promotion and Disease Prevention Act. The Secretary of Health and Human Services is directed to make grants to the Navajo Tribe to establish a demonstration program in Gallup, NM, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

Mr. President, I want to emphasize again that this bill represents a solid bipartisan effort that avoids the many controversial questions raised by the House and administrative proposals. Exclusively rule exceptions, drug testing of Federal employees, radical expansion of military involvement in domestic law enforcement, and capital punishment provisions have been omitted from this bill. In the spirit of bipartisan compromise, I support these omissions. Again, I hope this measure is the start of a long term commitment to dealing with drugs. Indeed, an effective anti-drug policy must embody three components—interdiction, education, and rehabilitation. This bill has those three parts and I am pleased to support it.

Thank you Mr. President.

AMENDMENT NO. 3054

(Purpose: To establish a community wide drug and alcohol prevention and health promotion demonstration program)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] for himself, Mr. DECONCINI, Mr. DOMENICI, and Mr. BRADLEY, proposes an amendment numbered 3054.

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

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

The amendment is as follows:

Amend Section 4228 by redesignating subsection (c) as (d) and inserting a new subsection (c) to read as follows:

"(c)(1) Demonstration Program.—The Secretary of Health and Human Services shall establish at least one demonstration project to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through 7th promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention service to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provides such services to other tribes, and

"(F) providing training and continuing education to employees of the Service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational

structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) for purposes of this paragraph, the term 'health promotion' shall include:

"(A) reduction in the misuse of alcohol and drugs,

"(B) cessation of tobacco smoking,

"(C) improvement of nutrition,

"(D) improvement in physical fitness,

"(E) family planning, and

"(F) control of stress.

"(6) for purpose of this paragraph, the term "disease prevention" shall include:

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.".

"(7) Sec. 4228 is amended by adding at the end the following "provided that $500,000 shall be made available for activities described under section 4228(c)(1).

Mr. BINGAMAN. Mr. President, this amendment I am offering on behalf of myself, Senator DECONCINI, Senator DOMENICI, and Senator BRADLEY which attempts to earmark $500,000 which is already in the bill from an amount of $4 million in the bill for a community-wide demonstation project to determine the most effective and cost-efficient means of preventing alcohol and drug abuse among Indian people.

There are several recent studies that confirm the high incidence of alcohol and drug abuse among Indian people. Clearly, this is a way to come to grips with that. This is a proposal which I believe has been cleared on both sides. I know of no opposition to it.

Mr. President, this amendment is essentially a portion of the Indian Health Promotion and Disease Prevention Act, S. 400. I would first like to commend my colleague from North Dakota, Senator MARK ANDREWS, and my colleague from Montana, Senator MELCHER, for their leadership in Indian health issues.

Last year, I held a field hearing in Gallup, NM, on S. 400, the Indian Health Promotion and Disease Prevention Act of 1985, a bill I introduced. S. 400 establishes a health promotion and disease prevention service within the Indian Health Service. Integral to the definition of health promotion is the reduction of alcohol and drug abuse. Consequently, testimony from the witnesses included discussion of the alcohol abuse epidemic in Indian country.

The hearing testimony revealed many health problems, but the No. 1 problem remained the same—alcoholism and alcohol related diseases, injuries, and death. It is clearly the most pervasive health and social problem facing Indians today. Larry Miike of the Office of Technology Assessment testified:

The need for such multiple approaches (outside the medical area) to the prevention and control of alcohol abuse makes the impact of any single program, however, broad, difficult to assess, but it is clear that a simple medical approach is insufficent and comes too late for most alcoholics.

As a result of this, other testimony, and my first-hand experiences with several Indian communities, I am convinced that intervention and prevention are the key and must begin at the youngest ages possible.

The Indian community is not unaware of this problem and its impact. Gilbert Pena, chairman of the All Indian Pueblo Council, which includes 18 pueblos in New Mexico, explained in his testimony:

The most obvious and vicious threat to the lives and well-being of our pueblo people is the damage brought on by alcoholism related destruction. Alcohol is a contributing factor in most of the motor vehicle accidents in our communities. Many of the costly hospital admissions are in some way connected with alcohol abuse.

However, in terms of the substantial cost of primary care and the strain on this nation's budget, economic cost is really nothing compared to the social cost to the Tribe. An extremely important part of the Indian culture and tradition lies in the sharing of experience and wisdom between the elders and the young people. Given the tragic rates of accidents and death among the younger age groups it is easy to see how the social order is severely impacted. Many promising young Indian leaders are now a part of the statistics.

Although the statistics paint a grim picture, some important attempts are being made to educate Indian people to the dangers of alcohol and drug abuse. In northern New Mexico, Tom Lujan, director of social services for the Eight Northern Indian Pueblos Council has an innovative and proven program directed to Indian youth. Tom teaches the children native dances and helps them identify with their cultural heritage. This in turn has helped them develop a positive self-concept as young adults. Such efforts need to be continued, but the battle is lost if we approach the task in a piecemeal fashion.

As the bill before us recognizes, rehabilitation and education is an important part of any comprehensive drug package. Section 4228 provides for training and community education that shall be undertaken between the Secretary of Interior and the Secretary of Health and Human Services. The training and education is intended to provide concise and timely information to the community leadership of each tribal community. My amendment compliments these efforts.

The amendment establishes at least one, but not more than four, demonstration projects to determine the most effective means of providing for drug and alcohol abuse prevention and general health promotion. These projects are to be undertaken in conjunction with health professionals and a health profession school. The Secretary is required to report on the success of the demonstration project. The amendment earmarks $500,000 for the demonstration project.

I urge my colleagues to join with me in supporting the adoption of this amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. BIDEN. We think it is a good amendment. We accept it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3054) was agreed to.

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

Mr. BIDEN. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER (Mr. WARNER). The Senator from New York.

Mr. D'AMATO. Mr. President, I introduce this statement on S. 2878, the bipartisan senate drug bill, to highlight how many of the provisions of the bill have their origin in legislative initiatives that have either been passed by the Senate or have been pending in the Senate for many months.

CRIMINAL PENALTIES

As in S. 2787, the Mandatory Crack and Other Drug Penalties Act that I introduced on August 15, 1986, this bill provides mandatory prison terms for persons—20 years to life for repeat offenders, or if death or serious bodily injury results—trafficking in specified amounts of certain drugs.

As in S. 2580, the Meaningful Crack and Cocaine Penalties Act that I introduced on June 20, 1986, and S. 2787, the amount of drugs required to trigger the minimum and maximum

prison terms, has been substantially lowered.

The amounts that shall now trigger the most severe minimum prison terms are: 1 kilogram of a mixture or substance containing heroin; 5 kilograms of a mixture or substance containing cocaine; 50 grams of a mixture or substance containing cocaine base; 100 grams of PCP; 10 grams of a mixture or substance containing LSD; 400 grams of a mixture or substance containing fentanyl or 100 grams of a mixture or substance an analog of fentanyl; or 1,000 kilograms of a mixture or substance containing marijuana. Lower minimum mandatories are provided for those trafficking in smaller amounts of these drugs.

USE OF FORFEITURES TO HELP FUND THE WAR ON DRUGS

In the area of forfeiture, I note that the essence of S. 1583, a bill I introduced on August 1, 1985, has been incorporated in this bill. This bill creates a new special forfeiture fund consisting of 90 percent of any funds not expended or obligated from the Justice or Customs assets forfeiture funds. Instead of being forwarded to the general treasury, these funds shall be made available for enhanced Federal, State, and local drug law enforcement, prevention, education, treatment, rehabilitation, and research.

MONEY LAUNDERING

The laundering of billions of dollars of drug money is addressed in this bill along lines almost identical to those I have proposed. The money laundering section of S. 2787 is essentially the same as the money laundering amendment to the debt ceiling extension bill that I introduced and that passed the Senate by vote of 98 to 0 on July 31, 1986.

This bill provides the Department of Treasury with an administrative subpoena power to investigate money laundering, as first proposed in S. 2579, a bill I introduced on April 13, 1984, and reintroduced as S. 571 on March 5, 1985.

S. 2787 also makes money laundering a crime, as first proposed by S. 572, which I introduced on March 5, 1986. It combats smurfing, one of the most effective evasion techniques favored by money launderers. Smurfing is the structuring of deposits so that each one totals less than the $10,000 amount that brings the law's reporting requirements into play. Making multiple deposits of $9,000 or $8,000 enables money launderers to avoid the Bank Secrecy Act's reporting requirements. S. 2787 follows the lead of S. 2306, a bill I introduced on April 15, 1986, by making this intentional evasion of the Bank Secrecy Act a criminal offense.

MILITARY ASSISTANCE FOR THE WAR ON DRUGS

On August 6 and 7 I was proud to join Senators STEVENS and DECONCINI in offering amendments 2565 and 2588 to S. 2638, the Defense Department Reauthorization Act. Working with Senators GOLDWATER, NUNN, CHILES, WILSON, and COHEN, we were able to win the unanimous approval of the Senate to these amendments, which provide our Coast Guard and Customs Service with hundreds of millions of dollars' worth of additional resources, and require the Department of Defense to attempt to locate facilities under its control that can be used to house criminal aliens.

This bill contains many of the most important provisions contained in these amendments. It mandates that at least 500 Coast Guard personnel be assigned to naval vessels to assist in drug interdiction.

It provides $212.1 million for enhanced intelligence collection activities and for E2C Hawkeye surveillance aircraft and other drug interdiction aircraft and aerostat radar to be used by the U.S. Customs Service and the U.S. Coast Guard.

Title III provides a total of $678 million to strengthen the interdiction capability of the Coast Guard and Customs Service, and contains many of the provisions contained in S. 2764, the National Drug Interdiction Improvement Act that Senator DECONCINI and I introduced on August 14, 1986. Among the major provisions in S. 2878 that had their origin in S. 2764 are:

An additional $90 million for Defense Department aerostat radars and Black Hawk helicopters to be used by our civilian agencies in drug interdiction; $153 million for the Coast Guard and $115.9 for the Customs Service; $25 million for the establishment of command, control, communications, and intelligence (C-31) centers; and $15 million for a joint United States-Bahamas Drug Interdiction Task Force.

Title III also contains the essential elements of S. 2748, the Customs Enforcement Improvement Act, a bill Senators HAWKINS and DECONCINI and I introduced on August 15.

REDUCING THE DEMAND FOR DRUGS

On May 1 the Senate voted 82 to 12 to accept amendment 1810 to Senate Concurrent Resolution 120, the Budget Resolution, increasing support for drug prevention, treatment, and research by $100 million per year. My amendment made it possible to increase the alcohol, drug abuse, and mental health block grant to $500 million. The Nation owes a debt of thanks to Senator WEICKER, the chairman of the Labor, HHS Appropriations Subcommittee, for making certain that the full amount was included in his recommendation to the Appropriations Committee. On August 15, the Senate Appropriations Committee approved the full amount.

S. 2878 builds on this initiative by authorizing an additional $150 million for drug education and prevention, and an additional $186 million for drug treatment and rehabilitation.

I am proud to note that this is significantly more than the $200 million increase originally provided for in S. 2850, which was introduced on Tuesday, September 23. Senator HATCH, the chairman of the Labor and Human Resources Committee, other Senators, and I have been working all week to develop a stronger effort to reduce the demand for drugs through prevention and treatment. This bill reflects our efforts.

The $130 million is provided through a new education and prevention block grant, $80 million of which will be transferred to State and local education agencies, and $50 million of which will be available to such agencies and to local community groups; $20 million is being made available for national programs and regional training centers.

The alcohol, drug abuse, and mental health block grant is increased from $500 million to $686 million; $550 million shall be distributed under the existing block grant formula, with a special set aside for high risk youth. An additional $125 million shall be distributed as follows: 25 percent to States on the basis of population, and 75 percent to States, such as New York, that have especially long treatment waiting lists and severe drug abuse levels; $11 million shall be transferred to veterans substance abuse programs.

The National Institute on Drug Abuse is reauthorized at a level of $129 million, and the National Institute on Alcohol and Alcohol Abuse is reauthorized at a level of $69 million.

Mr. President, on September 11 I wrote the majority leader urging him to include each of these initiatives in the comprehensive antidrug legislation that he was developing. I note for the record that he has done so. Among the other provisions I recommended that are in this bill are:

First, the denial of most-favored-nation trading status, foreign aid, and other assistance to any nation that refuses to cooperate in stopping drug production, and in prosecuting drug traffickers;

Second, strong criminal legislation against so-called designer drugs;

Third, especially severe penalties for those who make use of children in drug trafficking or who traffick in drugs near schools; and

Fourth, additional resources for our overburdened prison systems and law enforcement agencies.

I urge my colleagues to give this bill their full support, so that these and other initiatives that are essential for a real war on drugs and that have been pending for so long can become law.

Thank you, Mr. President.

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

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

U.S. SENATE,
Washington, DC, September 11, 1986.

Hon. ROBERT DOLE,
Majority Leader, Washington, DC.

DEAR BOB: As work proceeds on the development of comprehensive anti-drug legislation, I want to call your attention to several important legislative initiatives I have long been advocating. Despite news stories suggesting that financing an anti-drug program is a controversial matter, I also want to note how many of these proposals the United States Senate has endorsed by overwhelming margins.

On May 1, for example, I introduced an amendment to this year's budget resolution adding $100 million per year for 3 years for drug-education and rehabilitation programs. The Senate adopted this amendment by a vote of 82 to 12.

On July 31, I introduced a comprehensive money laundering amendment to the debt-ceiling extension bill. It passed the Senate by a vote of 98 to 0. This amendment contains the language of S. 2683, the consensus money laundering bill introduced on July 24. It makes money laundering a crime, addresses the critical problem of structuring, provides the Treasury Department with administrative subpoena power, subjects money launderers to maximum prison terms, fines, and forfeitures, and provides for a sharing of money forfeited from money launderers with police and other state and local law enforcement agencies.

On August 6 and 7, Senators DeConcini, Stevens, Cohen, and I introduced amendments to the Defense Reauthorization bill providing $512 million for a major interdiction initiative. These amendments, which passed unanimously and which were supported by the chairman of both the Armed Services Committee and Defense Appropriations Subcommittee, shift funds from the Navy and Air Force to the Coast Guard and Customs Service. They authorize the purchase of E-2C radar planes, patrol boats, aerostat radar balloons, and the placing of 500 Coast Guard personnel on naval vessels operating in drug interdiction areas.

Most recently, on August 15, the Senate Appropriations Committee approved the full $100 million increase provided for in my amendment to the budget resolution. This includes, among other items:

A $31 million increase for State and local drug-prevention and rehabilitation programs, including full restoration of Gramm-Rudman cuts;

$10 million for the nation's first drug-prevention demonstration-grant program, with an increased emphasis on identifying and assisting local prevention programs that work; and

$17 million for alcohol abuse prevention and rehabilitation.

In addition to measures that have passed the Senate, I also urge you to support the following.

DEMAND REDUCTION: PREVENTION AND REHABILITATION

Above all, we must reduce the demand for drugs through increased funding of drug-prevention and rehabilitation programs. To focus on areas with the greatest need, avoid wasteful "throwing money at the problem," and identify programs that work, we must strongly emphasize demonstration grants and program evaluations in the Senate bill. In addition to the use of direct appropriations, I recommend a new source of funding, as provided for in S. 1583, namely, the use of drug-asset forfeitures.

GETTING AT THE SOURCE: INTERNATIONAL COOPERATION

On the international front, we should deny most-favored-nation trading status, foreign aid, and other assistance to any nation that refuses to cooperate in stopping drug production and in prosecuting drug traffickers, especially those which torture and kill American drug-enforcement agents. We must make it clear to every nation that comes to us for help: you must cooperate in a real war on drugs first.

INTERDICTION

In the case of interdiction, I recommend amending the Posse Comitatus law to permit more direct involvement of the Armed Forces, as well as the approach contained in S. 2748, the Customs Enforcement Act that Senator Hawkins and I have introduced, and S. 2764, the Drug Interdiction Improvement Act. S. 2764 authorizes $1.4 billion in Navy and Air Force support for the Coast Guard and Customs Service, including the placement of 500 Coast Guard Law Enforcement Detachments (LEDETS) on naval vessels, and additional funding for DEA, federal prosecution and other law-enforcement agencies.

INCREASED CRIMINAL PENALTIES AND ENFORCEMENT

On the subject of criminal penalties, we must enact mandatory minimum sentences for cocaine, heroin, PCP, and designer drugs, with especially severe sentences for repeat offenders and for those involving children in drug trafficking and selling within 1,000 feet of a school.

In supporting this effort, I introduced S. 2580, the Crack and Cocaine Meaningful Penalties Act, and S. 2787, the Mandatory Crack and other Drug Penalties Act. These bills lower the amount of drugs that trigger maximum sentences, and provide mandatory minimum terms of 5 years for first offeders and 10 years for repeat offenders who traffic in crack, heroin, PCP, and LSDs. S. 2787 also imposes prison terms of 20 years to life for drug trafficking where, as in the Len Bias case, death results.

As you know, the Senate has already demonstrated its support for strong legislation against so-called "designer drugs" and provided a good faith exception to the exclusionary rule, only to see these bills languish in the House. Now is a most opportune time to review these initiatives.

If these tough measures are to have a real deterrent effect, the 5 percent cut in law-enforcement budgets that was passed by the House on July 17 has to be overturned. It is not enough to pass tough new laws. We must provide the resources to enforce them. The action of the Senate Appropriations Committee in affirming the budget proposed by Senator Rudman on August 14, restoring $200 million to our prison system, courts, prosecutors, and INS, needs—and deserves—the support of the entire Congress.

There is no greater challenge we face than to increase the effectiveness of our interdiction and eradication efforts, to make our criminal justice system work again, and to teach our children to say "no" to drugs.

Your commitment to this effort gives me great confidence that, at long last, we are going to launch a real war on drugs in order to provide the domestic tranquility our Constitution promises, and guarantee for our children the full and healthy lives that they were born to live.

I look forward to working with you on this, our nation's most urgent domestic priority.

Sincerely,

ALFONSE M. D'AMATO
U.S. Senator.

AMENDMENT NO. 3055

(Purpose: To prohibit possession, manufacture, sale, importation, and mailing of ballistic knives)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO] for himself and Mr. MOYNIHAN proposes an amendment numbered 3055.

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

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

The amendment is as follows:

At the appropriate place in the bill insert the following:

SEC. SHORT TITLE.

This Act may be cited as the "Ballistic Knife Prohibition Act of 1986".

(A) PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES

(a) The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more than 10 years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more then ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism".

(B) NONMAILABILITY OF BALLISTIC KNIVES

(b) Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

Mr. D'AMATO. Mr. President, I rise today to introduce the ballistic knife prohibition amendment. This amendment is identical to S. 2411, which I introduced on May 6 and which has bipartisan support. The amendment has been cleared on both sides. Basically, this amendment enjoys the total support of the law enforcement community in every group everywhere, from the National Sheriffs Association to the International Brotherhood of Police Officers, and to the Federal Law Enforcement Officers Association.

The legislation bans the manufacture, importation, sale, or possession of the so-called ballistic knife. This weapon has a detachable blade propelled by a spring-operated mechanism. It is important that this amendment be added because the ballistic knife is a favored weapon used by drug dealers. Indeed, the first time it came into the possession of law enforcement officials was during a drug raid in New York. The danger to law enforcement officers to quote the district attorney of Nassau County when he said, "The officer seeing the knife may not know that all the criminal has to do is to press a button and the knife is shot into his body," It can be propelled 30 feet with a force velocity sufficient to bring death.

I urge my colleagues to support this amendment. It has been cleared on both sides.

I would like to ask that Senator CHILES be added as a cosponsor.

Mr. BIDEN. Mr. President, we accept the amendment.

Mr. THURMOND. Mr. President, we accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New York.

The amendment (No. 3055) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, before I refer to my amendment, may I yield to my distinguished friend from New Mexico for an amendment we are cosponsoring that is in agreement on all sides?

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

AMENDMENT NO. 3056

(Purpose: To provide access for eligible homeless individuals to benefits under the food stamp, job training, AFDC, supplemental security income, medicaid, and veterans programs)

Mr. DOMENICI. Mr. President, I thank my friend from Illinois. On behalf of myself, Senators DIXON, GORTON, GORE, WILSON, BINGAMAN, DOLE, HEINZ, HATFIELD, DANFORTH, TRIBLE, and DODD, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] for himself and others proposes an amendment numbered 3056.

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

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

The amendment is as follows:

At the end of the amdt. add the following new title:

TITLE —HOMELESS ELIGIBILITY CLARIFICATION ACT

SECTION —. SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

SUBTITLE A—EMERGENCY FOOD FOR THE HOMELESS

SEC. —. SHELTER MEALS.

(a) DEFINITION OF FOOD.—Section 3(g)(8) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)(8)) is amended by striking out "women and children temporarily residing in public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "individuals temporarily residing in emergency shelters".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act is amended by striking out "public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "emergency shelters".

(c) PRICES CHARGED.—Section 7(b) of such Act (7 U.S.C. 2016(b)) is amended by adding at the end thereof the following new sentences: "Notwithstanding the preceding sentence, an emergency shelter may not charge prices for meals served to eligible households temporarily residing in such shelters that are higher than prices served to other individuals temporarily residing in such shelters.".

(d) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended by striking out "public and private nonprofit shelters that prepare and serve meals for battered women and children" and inserting in lieu thereof "emergency shelters that prepare and serve meals for individuals".

SEC. —. PREPARED MEALS.

Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) by striking out "and" at the end of clause (7); and

(2) by inserting before the period at the end thereof the following: ", and (9) in the case of individuals that do not reside in permanent dwellings or who do not have fixed mailing addresses, meals prepared by and served in public or private nonprofit establishments (eating or otherwise) that feed such individuals or in private establishments that contract with the appropriate agency of the State to serve meals to such individuals at concessional prices".

SUBTITLE B—JOB TRAINING FOR THE HOMELESS

SEC. —. JOB TRAINING FOR THE HOMELESS.

(a) ECONOMICALLY DISADVANTAGED TO INCLUDE HOMELESS.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F) an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).". (b) Job Training Plan.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semicolon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

SUBTITLE C—ENTITLEMENTS ELIGIBILITY

SEC. —. TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI PROGRAM.—Section 1631(e) of such Act (42 U.S.C 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective October 1, 1986.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction

of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1986. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC.—. SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end thereof the following new subsection:

"(p) The Secretary and the Secretary of Health and Human Services shall develop a system under which an individual applying for supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) prior to the discharge or release of the individual from a public institution under the pre-release program established under section 1635 of such Act shall also be permitted to apply for participation in the food stamp program by executing a single application.".

SEC. —. DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

HOMELESS ELIGIBILITY CLARIFICATION ACT

Mr. DOMENICI. Mr. President, there is no more obvious and tragic group of drug and alcohol abusers than those abusers who are homeless.

In December 1984, the Federal Task Force on the Homeless reported to the Secretary of Health and Human Services [Margaret M. Heckler] that the homeless fall into three categories:

First, people who have suffered recent economic setbacks;

Second, people who have experienced severe, personal crises;

Third, people who are chronically disabled by mental illness and/or alcohol and drug abuse.

The third group, a combination of mental illness and substance abuse, is estimated in this report to the Secretary to be "from one-half to two-thirds of the homeless population."

Other estimates place the drug and alcohol abusers at about one-third of all homeless individuals. (Third report by the House Committee on Government Operations, "The Federal Response to the Homeless Crisis," April 18, 1985, p. 25.)

This House report makes the following observation:

Until the 1970's, the homeless were usually single white males suffering from alcoholism or drug dependency. However, today's population is more heterogeneous. The homeless of today are younger, and include much larger percentages of minorities, women, children and entire families.

Thus, Mr. President, while the homeless population as a group has changed and grown, those who are alcohol and drug abusers remain homeless and in need of our assistance. It is the homeless drug abuser and the homeless alcoholic who are the victims of our war on drugs. These are the ones who have lost the battle with heroin, cocaine, crack, designer drugs, and hallucinogens. These are the disillusioned and the depressed. They are the ones who have turned to the bottle, the pill, or the needle for relief. Instead of relief, they have found more health problems, less mental capacity, and more frustrations. They are the showcase of the ultimate results and lifestyle of extreme drug abuse.

While no one can tell us with certainty about the links between mental illness and substance abuse, the homeless are our constant reminder that there is a link. I would also want to caution my colleagues about linking all homeless with these problems. There are clearly other reasons for homelessness, as I have mentioned. Yet, we cannot deny that the abuse of drugs and alcohol are related causal factors in the downward spiral that leads to the serious and complex mental problems of too many homeless people.

Our war on drugs would be lacking, Mr. President, if we ignored the homeless drug and alcohol abuser. This amendment removes the legal barriers that exist in our law that can prohibit a homeless person from receiving benefits to which he or she should be entitled. In its simplest terms, this amendment provides that the lack of a fixed address will no longer be a barrier in qualifying the homeless for the following programs—job training, aid to families with dependent children [AFDC], supplemental security income [SSI], Medicaid, and veterans programs.

Another important feature of this amendment is the addition of emergency shelters as an allowable place to use food stamps. We also provide that shelters may redeem food stamps only for food and cannot charge food stamp recipients more for meals than nonrecipients. The final feature of this amendment is the provision that allows a single application for SSI and food stamps in the existing pre-release program for institutionalized individuals.

This is a "no-cost" bill Mr. President. My attached explanation of the provisions of this amendment explains the source of Congressional Budget Office analyses supporting our conclusion that this is a no-cost bill.

In summary, passage of this amendment will open doors that are now closed to homeless individuals. These are people who are otherwise eligible for assistance from the Federal Government. The lack of a fixed address, however, gives a conscientious Federal employee a reason to deny benefits that should otherwise flow to many homeless people. We believe, Mr. President, that there is not a single Federal worker who enjoys denying vital and minimal benefits to people in desperate need. This amendment will allow Federal employees, in the name of the people of the United States of America, to qualify those homeless people, who otherwise fit program criteria, to become fully eligible for AFDC, SSI, Medicaid, job training, and veterans programs.

I ask unanimous consent that the explanation of the provisions of the amendment be printed in the RECORD.

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

AN AMENDMENT TO THE DRUG CONTROL BILL TO ASSURE ACCESS FOR ELIGIBLE HOMELESS PERSONS TO GOVERNMENT ASSISTANCE PROGRAMS

LINK TO DRUG CONTROL BILL

One third of homeless persons are substance abusers or members of families of drug and/or alcohol abusers.

PURPOSE

An amendment to assure access for eligible homeless persons under the food stamp, job training, Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid and veterans programs. This amendment is designed to achieve these objectives by making modifications that CBO has determined will not result in additional costs. The CBO estimates were made in conjunction with the introduction of the bills identified below.

LEGISLATIVE HISTORY

These provisions are currently contained in two House bills, H.R. 5139 and H.R. 5140, and two Senate bills, S. 2608 and S. 2533, which were introduced in the House of Representatives and in the Senate in June of 1986. H.R. 5139 was introduced by Congressman Leland (D-TX) and Congressman Rodino (D-NJ) and has been referred to the Ways and Means Committee. H.R. 5140 was

introduced by Congressman Leland and 52 co-sponsors and has been referred jointly to the Ways and Means, Agriculture, Education and Labor, Banking, Energy and Commerce and Veterans' Affairs Committees.

S. 2608 was introduced by Senator Gore (D-TN) and Senator Moynihan (D-NY) and has been referred to the Finance Committee. S. 2533 was introduced by Senator Dixon (D-IL) and has been referred to the Agriculture Committee.

PROVISIONS

1. *Purchase of shelter meals with food stamps.*—Amends the Food Stamp Act to allow residents of emergency shelters to use their food stamps to purchase meals at the shelter. The amendment would also provide that shelters may redeem food stamps only for food and cannot charge food stamp recipients more for meals than non-recipients.

2. *Use of food stamps by homeless persons to buy prepared meals.*—Amends the Food Stamp Act to allow persons without a fixed address to use food stamp coupons to buy meals in public or private non-profit establishments and certified feeding sites.

3. *Job training for the homeless.*—Amends the Job Training Partneship Act to include the homeless as a targeted group and requires job training plans under the Act to include a description of how programs will be established in locations providing services to the homeless.

4. *Access to the AFDC program.*—Clarifies existing law to assure that eligible homeless persons will not be denied AFDC benefits because they do not have a fixed address.

5. *Access to SSI benefits.*—Clarifies existing law to assure that eligible homeless persons will not be denied SSI benefits because they do not have a fixed address.

6. *Access to the Medicaid program.*—Clarifies existing law to assure that eligible homeless persons will not be denied Medicaid benefits because they do not have a fixed address.

7. *Single application for SSI and food stamps by pre-release individuals.*—Reduces administrative burdens by allowing individuals about to be released from a public institution to execute a single application for SSI and food stamp benefits under the existing pre-release program.

8. *Access to veteran's benefits.*—Clarifies existing law to assure that eligible homeless persons will not be denied veterans' benefits because they do not have a fixed address.

CBO COST ESTIMATES

1. *Purchase of shelter meals with food stamps.*—A CBO estimate made in conjunction with the introduction of S. 2533 indicated no additional cost for this provision.

2. *Use of food stamps by homeless persons to buy prepared meals.*—A CBO estimate made in conjunction with the introduction of S. 2533 indicated no additional cost for this provision.

3. *Job training for the homeless.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

4. *Access to the AFDC program.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

5. *Access to SSI benefits.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

6. *Access to the Medicaid program.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

7. *Single application for SSI and food stamps by pre-release individuals.*—As a result of this change, federal paperwork will be reduced because a single application will replace the two applications presently required.

8. *Access to veteran's benefits.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

Mr. DOMENICI. Mr. President, this amendment we call the homeless eligibility clarification amendment.

I think most Senators would be surprised to know that about 30 percent of the homeless suffer from either alcoholism or drug abuse symptoms. I think most of my colleagues would be surprised to know that homeless Americans, men, women, and children, under existing law do not qualify for many of the programs if they do not have a fixed address. Federal employees could legitimately, in doing a good service for their Government, turn down homeless people for veterans' benefits because the homeless applicant does not have an address. They could turn down homeless applicants for aid to families with dependent children because they do not have an address. They could turn down a homeless person for an SSI check because he did not have an address.

This amendment has no net estimated cost attached to it, according to the Congressional Budget Office but will qualify homeless Americans for those programs that they would otherwise be entitled to. The only other thing it does is to permit them to use food stamps, which they are entitled to, to pay the reasonable costs of food at shelters which they attend, an anomaly in the law. Homeless people can get food stamps, but by definition they have no home. So they cannot go to a grocery store and buy food to prepare because they have no place to cook it. Our amendment will permit them to use food stamps in the shelters to pay reasonable costs, if they were entitled to the food stamps. It is those kind of things that are in existing law that frustrate the efforts of volunteers, of cities, of various organizations that are trying to help.

Mr. NUNN. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield.

Mr. NUNN. I would like very much to be added as a cosponsor. I have read the amendment. I think it is an excellent amendment. I support it.

Mr. DOMENICI. I ask unanimous consent that Senator NUNN and Senator CHILES be added as cosponsors.

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

□ 2110

Mr. LEVIN. Mr. President, I want to commend the Senator from New Mexico for taking the time in this mad rush that we are going through this Saturday night to remember to treat these people he has referred to as fellow citizens properly. I would like to cosponsor the amendment.

Mr. DOMENICI. Mr. President, I do not want to take all the credit because, as a matter of fact, there are two major bills that do much of this. I was a cosponsor. They are running their course through the Congress. They are going to take a long time.

We got together with the National Coalition for the Homeless and a number of Senators. We took from those bills the things we could do tonight. The committees have accepted them. They have looked at them and said, "We should do this."

This helps in our drug efforts because many of these people suffer from drug problems. They will get relief.

Mr. LEVIN. It is typical for the Senator to share the credit but it is important for us to note that this Senator has taken the time, as he has tonight, to do this, and I commend him for it, the Senator from New Mexico. I ask to be added as a cosponsor.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator LEVIN be added as a cosponsor.

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

Mr. DOMENICI. Mr. President, my principal cosponsor is Senator DIXON of Illinois.

Mr. DIXON. Mr. President, I am pleased to join the distinguished senior Senator from New Mexico in sponsoring this package of amendments which will have a major impact on the lives of the homeless and no impact on the Federal deficit.

I sponsored legislation earlier this year which would authorize the redemption of food stamps for prepared meals in nonprofit facilities. Many of my colleagues may not realize that the current law does not permit food stamps to be redeemed for hot meals. This seems unreasonable since life on the street often does not provide access to cooking facilities or refrigeration, thereby making it impossible to prepare a hot meal or store food.

The legislation being proposed would allow the homeless to redeem food stamps, to which they are already entitled, for prepared meals in authorized facilities. It is a commonsense approach to feeding the neediest among us.

In addition, it will spread the limited resources of soup kitchens a little further, in that they will be able to redeem these food coupons for more food.

Many facilities turn away people every day. They have far more mouths to feed than provisions with which to feed them. Even minimal assistance to feeding centers which provide meals at an average cost of about 75 cents, can make a big difference.

In addition, there are many personal efforts being made to feed hungry people. One example is from my hometown of Belleville, IL. William Land and his wife, Dorothy, operate the Cozy Kitchen. They have been feeding anyone who needs a meal since 1983, paying for this out of their own pockets. It begins to add up after awhile. The Land's estimate that they have served 6,400 people in the past 3½ years. The intention of this legislation would be to allow such people to apply for participation in this program so that they could be minimally reimbursed for their food expenses. There is no requirement that anyone participate. It is strictly voluntary.

The Congressional Budget Office informed me there was no additional cost associated with this change. In fact, it would probably mean a more cost-effective way of redeeming food stamps, since people wouldn't have to purchase more costly prepared foods and would not waste that which could not be stored properly.

The Food Stamp Act makes it impossible for the homeless to effectively utilize a progam which was designed to meet the needs of the most destitute in our society. Therefore it just makes plain sense to tailor the program for those it was intended to serve.

Although my original legislation also included two other provisions which had some minimal costs associated with them—reimbursement to States for food stamp outreach to the homeless and an increase in the authorization of the temporary emergency food assistance program—the food stamps for meals portion is the heart of the proposal. I am hopeful, however, that next year we will be able to address the other pieces of my original legislation.

Another provision of our amendment would add the homeless as a target group for the Job Training Partnership Act.

The amendment would direct job training plans which are required under provisions in the act, to include a description of how job training programs will address the homeless population. It is hoped that this will provide a special concentration on the homeless and make job training programs more responsive to the homeless who are already technically eligible, so that their special needs can be addressed.

The final section of this amendment generally addresses the problems associated with getting benefits to which the homeless are entitled. It clarifies existing law to assure that just because an individual lacks a permanent address, benefits should not be denied. This would apply to aid to families with dependent children, Social Security benefits, Medicaid, and veterans' benefits.

The amendment also cuts through some redtape by providing that people who are about to be released from public institutions will be able to apply for supplemental security income benefits and food stamps in a single application.

Mr. President, we continue to make progress, little by little, in alleviating the suffering of our Nation's poor. Although these simple changes may seem inconsequential, they can mean better nutrition, improved chances for a job, a streamlined delivery system for benefits and an ultimate hope of greater dignity, and independence for America's poor.

Mr. DOMENICI. Mr. President, I ask unanimous consent that all Senators who asked to be made cosponsors be made cosponsors, including Senator THURMOND.

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

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I commend the Senator from New Mexico. I have worked with him on this matter. As he noted, there are a couple of bills pending, one being S. 608, which I introduced along with the Senator from New York, Senator MOYNIHAN. These provisions are among the several in that bill.

We worked together to pull them out. They make very good common sense. They should be adopted. They have no cost. They will not solve the entire problem faced by homeless persons in the United States, but they constitute important steps forward. They should be adopted unanimously. I urge all of my colleagues to support the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. DOMENICI. Mr. President, I ask unanimous consent that Mr. RUDMAN be added as a cosponsor.

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

The question is on agreeing to the amendment.

The amendment (No. 3056) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, my friend from Utah has a matter that will require about 30 seconds. I would like to accommodate him.

AMENDMENT NO. 3057

(Purpose: To ensure full one-half of 1 percent ($650,000) minimum grant to each of the 50 States under subtitle B—Drug-Free Schools and Communities Act of 1986)

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senator ABDNOR and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. ABDNOR, proposes an amendment numbered 3057.

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

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

The amendment is as follows:

Subtitle B—Drug-Free Schools and Communities Act of 1986 is hereby amended by striking "$500,000" in line 8, page 3, and inserting in lieu thereof "$650,000".

Mr. HATCH. Mr. President, I am offering an amendment on behalf of Senator ABDNOR. This amendment would increase the minimum allotment for the new education/prevention block grant from $500,000 to $650,000. I understand that this amendment has been cleared and I urge adoption of this amendment.

Mr. ABDNOR. Mr. President, as a member of the Education/Treatment Task Force, I understood our agreement concerning the education for prevention grant to States provided for under Subtitle B—Drug-Free Schools and Communities Act of 1986—of this bipartisan antidrug legislation included a one-half of 1 percent minimum for each of the 50 States. Initially, the Dole bill provided for a $100 million substance abuse education program. One-half of 1 percent of that amount would be $500,000. The bipartisan package now before us, however, provides for a $150 million education/prevention program of which $130 million is to be distributed to the States for school and community-based efforts.

Mr. President, I do not believe anyone intended to provide less than the full one-half of 1 percent State minimum. My amendment simply ensures that each State receives no less than one-half of 1 percent of the $130 million made available for State grants, or $650,000.

Again, I believe the intent was to provide a minimum of one-half of 1 percent to each of the States for vital education for prevention programs aimed at our Nation's youth. In the interest of fairness, I urge my colleagues to adopt my amendment.

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

The amendment (No. 3057) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3058

(Purpose: To make technical corrections)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. KENNEDY, proposes an amendment numbered 3058.

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

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

The amendment is as follows:

Strike out section 4002(a) of the bill and insert in lieu thereof the following:

(a) Section 1911 is amended—

(1) by striking out "the purpose of grants and allotments under section 1913" and inserting in lieu thereof "purposes of carrying out this part";

(2) by striking out "$576,000,000" and inserting in lieu thereof "$686,000,000"; and

(3) by adding at the end thereof the following new sentence: "If the total amount appropriated under the preceding sentence for fiscal year 1987 exceeds $500,000,000, 27 percent of the amount of such excess shall be added to and included with the amounts otherwise available under this part for allotments to States under section 1913 for such fiscal year, 67 percent of the amount of such excess shall be available for allotments to States under section 1921 for such fiscal year, and 6 percent of the amount of such excess shall be available for transfer to the Administrator of Veterans' Affairs under section 1923.".

At the end of the first section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill, strike out the end quotation marks and the second period.

Strike out the second section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill and insert in lieu thereof the following:

"TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

"SEC. 1923. The Secretary shall transfer to the Administration of Veterans' Affairs the amount which, under the second section of section 1911, is available for such transfer. The amount transferred pursuant to the preceding sentence shall be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug abuse dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.".

Mr. HATCH. Mr. President, I am offering a technical amendment for myself and Senator KENNEDY to correct title IV-A, section 4002a. This amendment clarifies the use of new substance abuse money, the ADMS block grant, and the Veterans' Affairs money.

Mr. President, I understand this has been cleared by both sides and is acceptable.

The PRESIDING OFFICER. Is there further debate?

Mr. THURMOND. Mr. President, we will accept the amendment.

Mr. CHILES. Mr. President, it has been cleared on this side.

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

The amendment (No. 3058) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATCH. I thank the Senator from Illinois for his courtesy. I hope that was quick enough.

AMENDMENT NO. 3059

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON], for himself, Mrs. HAWKINS, Mr. DECONCINI, Mr. MATTINGLY, and Mr. D'AMATO, proposes an amendment numbered 3059.

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

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

The amendment is as follows:

At the end of the amendment and the following:

(a) GENERAL REQUIREMENT.—

(1) AUTHORITY TO LOCATE, PURSUE, AND SEIZE AIRCRAFT AND VESSELS.—Within 30 days after the date of the enactment of this Act, the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of United States borders by aircraft and vessels carrying narcotics. Such equipment and personnel shall be used to locate, pursue and seize such vessels and aircraft and to arrest their crews. Military personnel may not make arrests of crew members of any such aircraft or vessels after the crew members have departed the aircraft or vessels, unless the military personnel are in hot pursuit.

(2) RADAR COVERAGE.—Within 30 days after the date of the enactment of this Act, the President shall deploy radar aircraft in reasonably available numbers so that during the hours of darkness there is continuous aerial radar coverage of the southern border of the United States to the extent possible.

(3) PURSUIT AIRCRAFT.—The President to the extent possible also shall deploy sufficient numbers of rotor wing and fixed wing aircraft to pursue and seize intruding aircraft detected by the radar aircraft referred to in paragraph (2). The President shall use personnel and equipment of the United States Customs Service and the Coast Guard to assist in carrying out this paragraph.

(4) USE OF NATIONAL GUARD AND RESERVES.—In carrying out this section, the President shall use members of the National Guard and the Reserves. The tours of such members shall correspond to their training commitments and shall be considered to be within their mission. The President shall withhold Federal funding from any National Guard unit whose State commander does not cooperate with the drug interdiction program required by this Act.

(5) EXPENSES.—The expenses of carrying out this section shall be borne by the Department of Defense.

(b) 45-DAY DEADLINE.—The President to the extent possible shall substantially halt the unlawful penetration of United States borders by aircraft and vessels carrying narcotics within 45 days after the date of the enactment of this Act.

(c) REPORT.—Within 60 days after the date of the enactment of this Act, the President shall report to Congress the following:

(1) The effect on military readiness of the drug interdiction program required by this section and the costs in the areas of procurement, operation and maintenance, and personnel which are necessary to restore readiness to the level existing before commencement of such program.

(2) The number of aircraft, vessels, and persons interdicted during the operation of the drug interdiction program and the number of arrests and convictions resulting from such program.

(3) Recommendations for any changes in existing law that may be necessary to more efficiently carry out this program.

(d) REQUEST FOR FUNDING.—Within 90 days after the date of the enactment of this Act, the President shall submit to Congress a request for—

(1) the amount of funds spent as a result of the drug interdiction program required by this section; and

(2) the amount of funds needed to continue operation of the program through fiscal year 1987.

Such request shall include amounts necessary to restore the readiness of the Armed Forces to the level existing before commencement of the program.

(e) BUDGET REQUESTS.—Beginning with the budget request for fiscal year 1988 and for each fiscal year thereafter, the President shall submit in his budget for the Department of Defense a request for funds for the drug interdiction program required by this section in the form of a separate budget function.

Mr. DIXON. Mr. President, this amendment is cosponsored by the distinguished Senator from Florida, Senator HAWKINS; the distinguished Senator from Arizona, Senator DECONCINI; the distinguished Senator from Georgia, Senator MATTINGLY; and the distinguished Senator from New York, Senator D'AMATO.

Essentially this amendment is a very substantial modification of the so-called Hunter amendment which has been considered in the House. It is a very substantial modification of that.

It authorizes the President to use equipment and personnel of the Armed Forces to address the unlawful penetration of the United States by aircraft and vessels carrying narcotics.

Such equipment and personnel are to be used to locate, pursue and seize such aircraft and vessels and to arrest their crews. This amendment makes it clear that those arrest powers may be employed only in the cases of hot pursuit where civilian personnel are not available at the time of seizing the contraband to make the arrest.

Why is that an important issue? Well, it is an important issue because section 1385 of chapter 18 of the U.S. Code, known as the posse comitatus section of the Code, essentially prevents the use of the Army or the Air Force to enforce the laws of the United States and to perform arrests.

The Coast Guard, as most of us here already know, is employed for that purpose.

What we are saying is, let us take the military hardware that is available.

In my amendment, we make it very clear that it must be whatever is available at the time. I have provided here to the extent possible to use whatever is reasonably available to make these kinds of arrests.

Someone has suggested, for instance, that it might be very difficult to find sufficient radar surveillance aircraft.

I just want to give you an example of the present situation.

There are presently 83 E2C's in the military inventory. Of those 83 E2C's, only 24 are currently deployed. That leaves 59 E2C's available right now of which only 20 would be needed for the interdiction mission.

As a matter of fact, here is a map of the southern part of our country. I understand those E2C's have a 400-mile radius. As you can see by looking at this map the deployment of those E2C's in six areas of our country stretching from Florida all the way along the southern coast of California, we could put the entire southern area of this country under complete radar surveillance with the deployment of these aircraft.

□ 2120

Mr. President, I appreciate the fact there will be some expression of opposition to this amendment. A much stronger amendment has passed the House, substantially stronger than the amendment suggested by this Senator. Last year, as I indicated, the House acted on the DOD authorization bill and we did not agree to what the House had done in that authorization bill. But I must say to my colleagues, I happen to be the ranking member of the Preparedness Subcommittee. We spend many hours in that subcommittee talking about having sufficient money appropriated so that our ships can steam, so that all of our pilots can fly and get sufficient air time so that we can have the kind of war games that we need to prepare our military personnel for any kind of military experience that our country might face.

I say let us usefully employ military personnel to the extent possible in a reasonable way. Let us usefully employ that equipment to the extent possible in a reasonable way.

I urge my colleagues to read my amendment, where I say throughout the amendment, "Where it is reasonably available," "to the extent possible," "to address this problem."

May I say to my colleagues, I do not think this is going to cost our country any additional money. These pieces of equipment, this military hardware, is already there and in place. We are appropriating the money for it. Our personnel are there. Need I remind this body that we are presently considering, in a conference between the two Houses, the DOD authorization bill, which will come out with a number somewhere around $2.9 billion? Our budget was $2.4 billion for DOD military authorization this year. I say why should we not be using those forces and why should we not be using that hardware to do the job?

Posse comitatus—here is the law on it and it is only one paragraph in the code. It came into existence essentially after the war between the States, when there was concern about using military personnel as police in parts of the country that were then essentially occupied by the military.

I can understand the reason for it then. The law is quite clear. Here is the case law on it. I have researched the case law. The case law simply says on posse comitatus that they do not have that authority unless granted by Congress.

That is why I am offering this amendment. I am offering this amendment to say that Congress grants the President of the United States the power to employ, in the Army and the Air Force, personnel, military hardware, aircraft, ships, ground equipment, weapons to enforce the laws with respect to drugs that we are passing here tonight and for purposes of drug interdiction. I entreat my colleagues to seriously consider this question.

I conclude by saying it is the enforcement of the laws that count. We can pass all kinds of mandatory sentencing laws here. I understand we are not going to go to the death penalty question tonight. If we went to it, I would vote for it. But we can do anything we can to make the laws stricter. We can fill the pages of the books with all kinds of laws. But unless we provide the personnel to enforce these laws similar to the State laws—if you do not have the cops on the streets, if you do not have them in the neighborhoods—you cannot enforce the laws. I am saying let us enforce these laws.

Let us use these hundreds of military personnel. Let us use these billions of dollars in aircraft and ships and guns and equipment to enforce these drug laws. If we do that, then I think before folks try to bring this poison into our country to rob the minds and the physical health of our children and our youth, they will think twice when they know that we are there and we mean business and we are backing up our bark with real bite.

I think this amendment is a good amendment. I urge my colleagues to seriously consider this amendment in a favorable way.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Mr. President, I discussed this amendment with my friend from Illinois. I would have liked to talk him out of proposing it but he decided against that .

Mr. President, here we are, voting on an antidrug bill, a bill that is supposed to declare war against the use and purchase of narcotics in this country. I find myself in perfect agreement with the purposes, but when you go to war, you have to have plans.

I have not heard one single plan on how this is to be done. My good friend from Illinois talks about using the military. Who is going to be the boss? How is it going to be run? How are they going to be employed? We are absent plans, we are absent any procedural plans for the purpose of accomplishing what we are setting out to do.

Mr. President, I have heard a lot about using the military. I approved without any question an amendment offered tonight by my friend from Arizona, my junior colleague, that would direct the Pentagon to list as soon as possible all of the equipment, the personnel, the planes, anything they have that could be used in this war against drugs. Just to make it perfectly plain to my friends in this body what we are faced with if we adopt the amendment of my friend from Illinois in the way of money, I shall just start out by telling my colleagues, about $40 million a day. I know my colleagues will laugh at that, but I shall repeat it: $40 million a day.

Let me try to spell that out a little bit. I received some of these documents from the Department of Defense that described to some extent the force requirements in the event of our military being asked to help with sealing our borders. This prevails throughout the argument. Here is what we will need:

We will need 90 AWACS aircraft. That is far more than we own and we need them overseas; 188 fighters on alert; 36 tankers per day; 88 E-2-C aircraft—and there are only 85 available in the whole country; 88 P-3 aircraft, which just about uses up our entire in-

ventory; 132 ships—these include destroyers, cruisers, hydrofoils—and there are only 194 available; 800 helicopters—well, we have 1,400 of those available; 133 infantry battalions, 106,400 personnel. This comes to about the entire continental U.S. division combat strength.

I remind all of my colleagues that tasking our military with this mission will absorb a considerable amount of our national military assets—and I want you to get this one—at a time when the Department of Defense is facing $30 billion cuts in this year. $30 billion, and we are being asked now to ask our taxpayers to bump that to $40 million a day.

In addition, there is talk that our forces will have to be reduced due to the large defense cuts we now face.

Let me say that again: I am not trying to fool you on this. We have reached a point in our military authorizations where we are being asked to take one more cut from the budget.

□ 2130

Mr. President—and the Presiding Officer knows this as well as I do—we are faced with reducing the force structure of our military, the worst, the most dangerous action that can be taken by any military regardless of whether it is the United States or wherever it is in the world. We have today the finest military personnel strength I have ever known in my life, and yet we are now at that point where we might have to reduce them, and here we have legislation asking that the whole kit and caboodle will be used to circle our country to prevent the intrusion of narcotics. I am not opposed to that, if we had some kind of plan. I do not know what the devil they would do. They would stand every 10 feet on the dark Mexican border that runs along the bottom of my State. They are not going to catch them.

It would be devastating to military readiness and our capability if this amendment were allowed to pass. I have to say, Mr. President, that this amendment has a lot of political sex appeal. You can go home and say, "Well, we have sure taken a crack at the narcotics business. We've put all our forces against them." Well, we might some day have to go to war. I hope we do not. But we have to maintain the military strength in this country or we are inviting war—not just war with narcotics but war with the real enemy. I am not saying we cannot accomplish this with the military. We may be able to and we probably can, but we cannot do it without a plan. I urge my friends on the floor who are running for reelection, who are backing this legislation, to get a plan and let us know what it is.

Mr. President, that is all I have to say on it. I yield the floor.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I know that everyone would like to make this a short amendment, and so would I, but it is going to have to require a good deal of discussion, and this is not in any way to say it is going to take 4 or 5 hours. I do not intend that. But I really think we have to have everyone understand it and if they want to vote for it, that is fine.

Mr. President, I have been involved in trying to strengthen our domestic law enforcement in the narcotics field for a long time, in fact for about 12 years now. It was my amendment in 1981 that amended the original posse comitatus law. I went down and talked to the President about it. President Reagan had just come into office at the time we were proposing that legislation. We carefully amended that law to permit the military to assist domestic law enforcement in their surveillance, in their intelligence, in their communication, in their equipment, which they can do right now because of that legislation. We did it, though, without granting them the power of arrest. For over 100 years now, we have precluded the military from being domestic law enforcement agents. This amendment tonight by my good friend from Illinois repeals that concept totally. I know that there is every sincere effort behind this to curb drugs. I share the goal. We all have the same goal. We are talking about how we do it.

If President Reagan was here tonight asking the Senate of the United States to give him this authority, we would have a filibuster. We would have a filibuster. The only reason people are going to vote for this tonight is because they do not think he will use the power to do it. The reason we would have a filibuster is because it would be the largest grant of power in peacetime to a President of the United States that I can remember in the history of our country. Someone may think of another one. I cannot. This would permit any member of the Army involved in the pursuit of drug traffic on the ground, any member of the Air Force pursuing in an F-15, any member of the Navy pursuing in a ship, to make arrests of civilians without a warrant, without a warrant within the United States—in the United States. That is what we are granting.

If that is what we want to do, fine. I do not think I would get very good marks from the civil libertarian groups on that proposal.

Not only was it my amendment that amended the posse comitatus law, it was also my amendment that gave the Internal Revenue Service the mandate to begin working with domestic law enforcement on cash-flow cases. I do not think I got good marks from the ACLU on either one of those. But here we are tonight at 9:35 about to make the U.S. military law enforcement officials within the United States. That is what we are talking about. So this amendment is a serious amendment.

Let me just say that this amendment has greatly watered down the original Hunter amendment. But the Senator from Illinois and the Senator from New Mexico and the junior Senator from Florida, and others have said here on this floor that what they really support is the Hunter amendment. That has been said tonight. I am going to address my remarks to the Hunter amendment, recognizing that the Senator from Illinois has made changes in that but recognizing that if the only thing the Senator from Illinois wants to do, absent the right of arrest, is the watered down version he is presenting tonight, if he is not really for the Hunter amendment, what he wants to do then has already been done in the DeConcini amendment which we adopted. We had a rollcall vote on that. Everyone has already voted to get a plan from the military and to require the Secretary of Defense to have a plan about everything he can do to assist in law enforcement.

So I am saying that what we are really voting on tonight is the Hunter amendment. That is in the bill on which we are going to be going to conference. So if we vote for this amendment tonight, what we are saying is we are in favor of the Hunter amendment. That is the way I am taking it. Now, I understand the Senator from Illinois would argue the other side of that because in technical terms he has amended the Hunter amendment.

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

Mr. NUNN. Yes.

Mr. DOMENICI. The Senator mentioned the Senator from New Mexico was in support of the Hunter amendment. The Senator was not referring to this Senator.

Mr. NUNN. I meant to say the Senator from Arizona, the junior Senator from Arizona [Mr. DECONCINI]. If I said the Senator from New Mexico, I misspoke.

Mr. DOMENICI. I thank the Senator.

Mr. NUNN. I thank my friend for correcting me.

Mr. President, the Hunter amendment, which we will have in conference and which this amendment is going to be a symbolic vote toward, requires the President to engage the Armed Forces within 30 days, within 30 days. The DeConcini amendment we passed gave him 90 days to make a plan, but the Hunter amendment gives him 30 days to implement it. We do not even know what it is. Thirty days

to locate, pursue and seize—to locate, pursue and seize all drug-carrying aircraft and vessels entering the boundaries of the United States. This includes, according to the definition as I would read it, the U.S. proper as well as Hawaii and Alaska, all of our States. Also it gives arrest authority—the Dixon amendment does this—arrest authority to the military for the warrantless arrest of crews of the ships and planes that they stop, including the right to follow these individuals in hot pursuit to effectuate their arrest.

For some reason the amendment omits the authority to arrest passengers on ships or planes who may be equally culpable in the drug smuggling. Only the crews. So if there were eight passengers on an airplane and a loading crew, they could not arrest those passengers, just the crew. We have to define what a crewmember is, I suppose, under the law. That is a good one for the lawyers to chew over.

Mr. WARNER. Mr. President, will the Senator yield for a question——

Mr. NUNN. I yield to my friend.

Mr. WARNER. Since he is addressing the Hunter amendment, I find in the amendment proposed by our colleague from Illinois an astonishing request, and I wonder if it is also in the Hunter amendment, and that request is that the National Guard and Reserves of the United States shall be employed under this amendment and the President is directed within 45 days to implement all these forces to stop the flow of drugs into the United States. Now, that is indeed a commendable goal. But if the National Guard does not comply with the orders, the amendment provides that if the State commander fails to cooperate, the funds are withdrawn by the United States of America to the National Guard and Reserves.

Mr. NUNN. The Senator from Virginia is correct, and that is not only in this amendment, it is also in the Hunter amendment.

Mr. WARNER. I hope every Senator takes the time to read this and I would certainly call your Governor and inquire if that is the obligation you want to put on your Guard and Reserve and to send these young men and women, members of the Guard and Reserve, out in hot pursuit, armed, against these drug traffickers, many of them having received little or no training in the military at the time they entered the Guard. And I do not not believe many Guard units train their personnel in connection with the pursuit of felons and the use of force and the making of an arrest.

□ 2140

Mr. NUNN. I say to the Senator from Virginia that I think it is indeed a paradox that we have had a filibuster threatened on the exclusionary rule, which employs a good faith kind of effort, instead of the present rule for domestic law enforcement, who are trained in law enforcement. We have had another filibuster threatened on any kind of change in habeas corpus, and another filibuster threatened on capital punishment. But this amendment gives the military the right, without warrant, with no training in law enforcement, no provision for training, within 30 days—they do not have time to get trained—to go out and start shooting folks down. There is no exclusionary rule for that. You just shoot them down—bang. They have to shoot quick because an F-15 cannot trail——

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator form Georgia has the floor.

Mr. WARNER. I ask another question of the Senator: Does he find in the Hunter amendment or the amendment at the desk any direction or qualification or definition of what is hot pursuit?

Mr. NUNN. There is no definition that I find.

Mr. DIXON. Addresed the Chair.

Mr. WARNER. Does the Senator find in there any direction or description as to the circumstances under which civilian authority is to provide for the arrest?

Mr. NUNN. There is no provision I know of in there.

Mr. WARNER. So, under this amendment, we are delegating to young, untrained members of the Armed Forces of the United States, Reserve and Guard, to determine for themselves what is hot pursuit and when force may be used.

Mr. NUNN. As I understand the amendment, the President of the United States could call up the Virginia National Guard and say: "Go get them, fellows; take your F-4's, F-15's, whatever aircraft you have. If you see a passenger plane coming in, you don't know what kind of authority it has, shoot it down. If you see a ship out there, maybe it's a yacht sailing around and lost, and if you think it has drugs on board, fire a torpedo, shoot it down. Don't worry about the exclusionary rule, habeas corpus, all those good things."

It might be the answer to capital punishment. Kill them before they are tried. [Laughter.] Do not worry about delays in the trial. Just shoot them down. I thought I was pretty tough on law enforcement until I saw this amendment.

Mr. DIXON. Mr. President, will the Senator from Georgia yield for a moment?

Mr. NUNN. Let me finish my remarks.

Mr. DIXON. I want to strike something out.

Mr. NUNN. I like it the way it is. Let us leave it the way it is for a few minutes, and then I will yield.

Mr. DIXON. I would like to strike that section from page 2.

Mr. NUNN. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Let us talk about it the way it is. I know that the Senator, if he had time, would probably change the whole amendment; and if he hears what we are going to tell him about the amount of military force required to carry out the intent of this amendment, I believe the Senator might reconsider it.

Mr. DIXON. If my friend from Georgia will permit me to interrupt—I have great admiration for him—I would like to strike out all the section challenged by the Senator from Virginia, so that it is no longer part of the debate, because I agree with my colleagues in respect to those lines, 18 through 22, on page 2.

I ask that those lines be stricken from the amendment.

Mr. NUNN. Mr. President, I yield to the Senator from Illinois for that purpose.

Mr. DIXON. I thank my friend from Georgia.

The PRESIDING OFFICER. Is the Senator from Illinois making the modification he has proposed?

Mr. DIXON. I ask for that modification, Mr. President.

The PRESIDING OFFICER. The amendment is so modified.

The modified amendment is as follows:

At the end of the amendment add the following:

(a) GENERAL REQUIREMENT.—

(1) AUTHORITY TO LOCATE, PURSUE, AND SEIZE AIRCRAFT AND VESSELS.—Within 30 days after the date of the enactment of this Act, the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of United States borders by aircraft and vessels carrying narcotics. Such equipment and personnel shall be used to locate, pursue, and seize such vessels and aircraft and to arrest their crews. Military personnel may not make arrests of crew members of any such aircraft or vessels after the crew members have departed the aircraft or vessels, unless the military personnel are in hot pursuit.

(2) RADAR COVERAGE.—Within 30 days after the date of the enactment of this Act, the President shall deploy radar aircraft in reasonably available numbers so that during the hours of darkness there is continuous aerial radar coverage of the southern border of the United States, to the extent possible.

(3) PURSUIT AIRCRAFT.—The President, to the extent possible also shall deploy sufficient numbers of rotor wing and fixed wing aircraft to pursue and seize intruding aircraft detected by the radar aircraft referred to in paragraph (2). The President shall use personnel and equipment of the United States Customs Service and the Coast Guard to assist in carrying out this paragraph.

(4) USE OF NATIONAL GUARD AND RESERVES.—In carrying out this section, the President shall use members of the National Guard and the Reserves. The tours of such members shall correspond to their training commitments and shall be considered to be within their mission.

(5) EXPENSES.—The expenses of carrying out this section shall be borne by the Department of Defense.

(b) 45-DAY DEADLINE.—The President, to the extent possible shall substantially halt the unlawful penetration of United States borders by aircraft and vessels carrying narcotics within 45 days after the date of the enactment of this Act.

(c) REPORT.—Within 60 days after the date of the enactment of this Act, the President shall report to Congress the following:

(1) The effect on military readiness of the drug interdiction program required by this section and the costs in the areas of procurement, operation and maintenance, and personnel which are necessary to restore readiness to the level existing before commencement of such program.

(2) The number of aircraft, vessels, and persons interdicted during the operation of the drug interdiction program and the number of arrests and convictions resulting from such program.

(3) Recommendations for any changes in existing law that may be necessary to more efficiently carry out this program.

(d) REQUEST FOR FUNDING.—Within 90 days after the date of the enactment of this Act, the President shall submit to Congress a request for—

(1) the amount of funds spent as a result of the drug interdiction program required by this section; and

(2) the amount of funds needed to continue operation of the program through fiscal year 1987.

Such request shall include amounts necessary to restore the readiness of the Armed Forces to the level existing before commencement of the program.

(e) BUDGET REQUESTS.—Beginning with the budget request for fiscal year 1988 and for each fiscal year thereafter, the President shall submit in his budget for the Department of Defense a request for funds for the drug interdiction program required by this section in the form of a separate budget function.

Mr. NUNN. Mr. President, what the Hunter amendment does—I argue, in all sincerity, that what we are voting on tonight is tantamount to the Hunter amendment. If this amendment is adopted, that is where we will be going next year.

What we are doing by legislative fiat is that we are declaring that the President should deploy the strategic defense initiative by Christmas, and then we could stop all the missiles coming in.

While we are doing that, we should legislate that by February, we abolish the common cold. I know the majority leader has one tonight.

That is what we are basically doing. We are not considering the ramification of this.

I think we should discuss this a few minutes.

I have a preliminary report from the Joint Chiefs of Staff, and I have to say that this is a very sketchy report. It may be that, after further study, this can be changed upward or downward; but because we have to consider this in a short time, my colleagues are at least entitled to know that the Joint Chiefs think this would require.

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

Mr. NUNN. I yield.

Mr. GRAMM. In looking at the mandate in this timetable, does this amendment contemplate the use of nuclear weapons? [Laughter.]

Mr. NUNN. I say to the Senator from Texas that it does not preclude it and does not mandate it.

Mr. WARNER. At that point, we have to allow the Senator from Illinois to clarify the amendment to exclude the use of nuclear weapons.

Mr. NUNN. There may be a case for the neutron weapons.

Let me say here what we have been told by the Joint Chiefs. This is a preliminary estimate.

The Air Force says that to cover the country as they are being mandated to do, they would be required to deploy 90 AWACS aircraft. That is our most sophisticated surveillance plane. To cover the borders, the Air Force estimates that 18 permanent orbits would be required. To cover those for 24 hours a day, five planes are needed for each orbit. That is what is required. We do not have 32 AWACS in the whole world. We would have to come up with 58 AWACS aircraft in 30 days. We might call this the Boeing amendment before it is over. [Laughter.]

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

Mr. NUNN. I yield.

Mr. MATTINGLY. There is something else that can be used, other than AWACS. What about the E-2-C's?

Mr. NUNN. I am glad the Senator brought that up. I will get to it. The AWACS have the big orbits. With the E-2-C's, they would have to have 88. There are currently only 85 E-2-C's in the entire Navy. So we would have to bring all of them home.

In fact, this makes the Mansfield amendment look like an aggressive, forward defense strategy. We will have to bring everybody home. We will have to bring the Navy home, because they will not have surveillance.

Let me go forward and describe it a little further.

The amendment would also require 180,000 hours of flight time. The Senator from Illinois is one of our outstanding Members who has spent a lot of time on the operation and maintenance. We have just seen the Appropriations Committee cut some $2.5 billion out of that account, and we know that will put a squeeze on operation and maintenance.

The Joint Chiefs estimate that it would require 180,000 hours of flight time. The current 1987 budget programs only 30,000 hours of flight time for all the AWACS aircraft we have in the world. Six times what we have programmed for next year is required just for this mission.

The Department of Defense, under this amendment, would use up the entire allotment of AWACS flying time in 51 days.

Such a proposal would also require four new operating locations with maintenance facilities. I might add that with such a level of operation, current reserve spare parts we have for AWACS would be depleted after 15 days. That would not leave us any for war. Maybe we can get the Russians to be nice guys and maybe we can protect the Middle East with friends there. Maybe we can pull back from the Pacific. That is basically what we are talking about here tonight.

Even if the amendment were changed to require interdiction of only the southern border—we eliminate the requirement that all the borders be protected—it would require 6 AWACS, with 5 planes on an orbit, for a total of 30 planes.

□ 2150

That would defeat the entire 1987 flight time program after 15 days.

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

Mr. NUNN. I can go on. It gets worse.

Mr. BIDEN. I have been here with the Senator from Georgia as long as he has been here and having witnessed a number of debates, I never witnessed the moral equivalent of the requirement of surrender here.

Would the Senator from Georgia allow the rest of the Chamber to surrender and vote with him and get on with the vote? His case is so overwhelming, so compelling, I do not know how anyone could vote for it, although it is enjoyable to listen to it. I think maybe we could suggest the sponsor of the amendment bring the amendment down and we can go with the rest of this vote.

Mr. NUNN. Mr. President, let me just give you a couple more statistics.

Mr. BIDEN. The Senator does not want to surrender.

Mr. NUNN. It would take 800 helicopters.

Mr. BIDEN. What does it take to get the Senator to stop?

Mr. CHAFEE. Is the Senator prepared to take a few prisoners?

Mr. NUNN. The F-15's have a problem. They cannot land on short airfields. You have to have helicopters and the helicopters have to be all over the United States so they can deploy within 15 to 20 minutes. Otherwise, they cannot get to the plane before the drugs would be unloaded even if the F-15 forces it down.

They would have to have some 800 helicopters and new bases all over the

country and still have not done anything to protect the border from traffic of men coming across.

If we want to protect the Mexican border, we are going to have to spend, and that is not required in this amendment—I want to acknowledge that—if we want to protect the Mexican border we would have to move every U.S. Army division in the United States to the borders and deploy them and that probably still would not do it. It will take about 10 divisions. They would have to have probably 250 to 300 military bases.

To further clarify the helicopter requirement, there is an additional problem in the deployment of the helicopters that would have to be used to search and seize the drug smuggler once he has landed. Since the drug smugglers can land anywhere, DOD would have to establish bases throughout the United States so that they can quickly reach the downed plane before the drugs can be unloaded. DOD projects that the Blackhawks would have to be located no further than 75 nautical miles from potential landing sites to guarantee proper response time.

This will mean huge costs for logistics and support functions for these new helicopter bases. It also means that new bases would have to be established within the United States since drug planes commonly land in Tennessee, Virginia, and elsewhere. DOD estimates a minimum of 80 bases would be needed to meet this assignment. Of those 80 new bases, only 49 could be located at available civilian fields. The remaining 31 would have to be set up as tent cities within the domestic United States.

A minimum of 800 helcopters would have to be deployed to satisfy the amendment. This would amount to 56 percent of all available helicopter resources, including reserves, or 80 percent of the 1,000 active duty copters.

DOD would have to assign 7,400 MP's to man these helicopters for drug interdiction. This compares with a total complement of 13,600 MP's in the continental United States.

These MP's would be the best military personnel available for law enforcement purposes. Nevertheless, none of the MP's are trained for customs, maritime or civilian law enforcement tasks. For example, it takes 9 months currently for the Coast Guard to train their personnel for use on TACLETS teams on Navy ships.

Should military personnel begin making arrests, many troops would be further burdened by the requirement to appear as witnesses in often lengthy civilian drug trials. This could mean not only the MP's or TACLETS members but also the officers and crew of the ships or planes that participated in an interception.

Imagine the commander of an aircraft carrier in the Mediterranean having to return to Miami to sit in court for several weeks while the trial drags on or for pretrial proceedings.

Mr. LEVIN. Mr. President, I favor greater use of the military in the war against drugs. We should do so in a planned manner, as was called for by the DeConcini amendment, which I cosponsored and which was adopted earlier this evening. However, if a sincere attempt is going to be made to implement the Dixon amendment now before us, then I have some concerns about its implications for the normal operations of the military in meeting its present obligations. Senators GOLDWATER and NUNN amply described the practical problems with this amendment. Until those practical problems are addressed, I believe we have no choice but to table this amendment, although I generally support the direction in which it would move us.

Mrs. HAWKINS. Mr. President, 90 percent of the drugs consumed in the United States are produced abroad—this vicious white and green and brown tide poses a clear and present national security threat to America.

I told you about my trip to Guantanamo Bay in Cuba with the commandant of the Coast Guard to inspect vessels seized in "Operation Hat-Trick."

I spoke, Mr. President, about looking inside a shrimp boat and finding a bridge that looked like the control tower at Miami International Airport. There is no more glaring evidence than this that we are in a war. And we have no doubt, Mr. President, of who is winning a war. The forces of law and order are outspent, outmanned, and outgunned by the drug-lords. They control the seven seas and they are quickly gaining the upper hand on control of American airspace.

Mr. President, every day I receive a stack of letters. They tell me, Senator if you really wanted to stop the flow of drugs, you would take some real action. You would get the military involved. For years we have heard that we should "call out the troops" to help local and Federal officials fight the war on drugs. There are those who propose this as if it were a new idea. When the plain truth is that we have been talking about this and have had it at our disposal for years.

Last week I spelled out what the military is doing to help.

Navy and Air Force radar aircraft are flying missions to detect drug traffickers offshore in support of the Coast Guard and Customs Service.

Navy ships operating in coastal waters are constantly vigilant for suspect vessels and some carry Coast Guard tactical lawenforcement teams which board suspect vessels.

The Marines operate aircraft for night detection of drug smugglers.

Air Force aircraft are flying frequent training missions in support of the drug enforcement community.

According to a recent White House strategy report, the Air Force provided the Customs Service access to all information obtained from a joint surveillance military/civilian surveillance system and from two balloon-borne radars which provided coverage off the coast of my State of Florida.

Recent testimony in the Appropriations Committee went on for nine pages about DOD assistance to law enforcement.

Time after time, the Defense Department gives assurances—to the White House and to Congress. Still, the American people do not perceive that there is enough action. And I must say, neither do I. So much more can be done. Here are some facts, Mr. President:

First. There are an estimated 10,000 intruding aircraft per year that refuse to land at border airports. These intruders should be pursued. That averages out to about two drug planes per hour penetrating American airspace. These planes are small. They are slow. They could easily be picked up by military planes.

Second. Total coverage of the entire southern border during the hours of darkness would require six military E2-C's. Six planes could cover the entire southern border. There are now 83 of these planes in the military inventory. An there are only 24 currently deployed.

Third. Other equipment * * * F-4 fighters. There are currently 1,650 of them. OV-10 aircraft. There are 118 of them. Blackhawk helicopters. There are 335. These aircraft can chase and interdict drug-bearing planes.

The Pentagon continues to assert that it has little or no role in this war. That is not acceptable, Mr. President. The Congress did not go to the trouble of amending the posse comitatus just to have our wishes ignored.

The amendment we are introducing today calls for action and examines exactly where the DOD is falling down on its responsibility to fight the war on drugs. We will look at the assets that are available. And we will examine how they can be used. Armed with this evidence, Mr. President, the Congress and the American people will be in a position to demand specific involvement by the military.

As I said here on the floor earlier, Mr. President, perhaps we can stretch the definition of DOD responsibility.

Several Senators addressed the Chair.

Mr. LEAHY. Will the Senator yield?

Mr. NUNN. I yield the floor.

The PRESIDING OFFICER (Mr. WILSON). The Senator from Georgia has the floor.

Mr. NUNN. Mr. President, I yield.

Mr. LEAHY. Mr. President, will the Senator yield to me?

Mr. NUNN. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I think we should conclude this debate promptly but on a very serious note. The posse comitatus law has been on the statutes of the United States for over 100 years. It has withstood the test of time, the stresses of major wars, and the impact on the civilian law enforcement, but the wisdom of the Congress to date has prevailed and that law should not be changed.

I urge the rejection of this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I will be brief.

Mr. President, I am greatly concerned about our situation regarding drug trafficking. I am gravely concerned. I would go to almost any length to do whatever is necessary. But I certainly would not go into the military and take our men and our equipment. We have to turn somewhere else.

I have been connected with law enforcement officers and public servant people a long time. I am a former district prosecuting attorney, former trial judge, and I have been up here a good while.

I wish, above all things, that I would furnish a remedy on this drug matter. But I would not dare undertake this pattern of going this route. We will not only fail to get a remedy but we would destroy or greatly impair our regular military group.

So I warn that let us not make this error. It looks attractive on the surface, maybe, to some. But it will be a great mistake and will not accomplish good but would make us worse off than we were.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. (Mr. WARNER). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DIXON. Mr. President, I am perfectly prepared to vote on the motion to table.

The PRESIDING OFFICER. The Chair wishes to point out to the distinguished Senator from Illinois that a motion to table is not debatable.

Mr. DIXON. And this Senator wishes to point out to the President that this Senator knows that rule very well and this Senator has extended the courtesy to a great many Senators since he has served here to be briefly heard, and this Senator would like to be briefly heard before the motion to table is voted upon.

The PRESIDING OFFICER. It was not the intention of the Chair to be discourteous but merely to advise the Senator of the rules.

The majority leader.

Mr. DOLE. Mr. President, I ask unanimous consent he may have 5 minutes.

The PRESIDING OFFICER. Without objection, the Senator from Illinois has 5 minutes.

Mr. DIXON. Mr. President, there has been a degree of levity here about this particular amendment. This amendment that I have offered is substantially modified from what the House of Representatives has already done. All this talk about using all the AWACS and using all the airplanes and using all the troops has excited a good many Senators here. I see that.

But the fact is that all that my amendment does is permit the Government to employ the military as an exception to the posse comitatus law to interdict drugs coming into the United States and then only under the law of hot pursuit.

When someone says what is the law of hot pursuit, that matter has been passed upon thousands of times by thousands of courts in this country. There is absolutely nothing the matter with his amendment if folks in this Senate want to do something about drug interdiction into this country.

We are simply permitting the military in those cases of hot pursuit to enforce the law. We are not saying how many AWACS we use or how many other kinds of pieces of military hardware or equipment we might use.

Nothing like that is said in this bill. When my friend from Arizona said who is the boss on this plan, my answer is the amendment says the President is, the President of the United States.

When my friend from Arizona says where is the plan, the amendment spells out on page 2 that in 60 days the President of the United States will bring you the plan.

I say to my friends here that it is all very well to belittle what is being offered here in this amendment. The House has done something similar to this twice. I think that this law would be a reasonable one and it would be the most important single powerful weapon to deal with drug interdiction that this Senate could possibly consider.

I understand that, Mr. President, some others have asked to speak on my side. My distinguished friend from Arizona has asked to be heard. I would like to ask the indulgence of the Senate so that others who are of a like view to this Senator might be heard briefly on the subject.

Mr. DECONCINI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DECONCINI. How much time remains?

The PRESIDING OFFICER. The time remaining is 2 minutes and 3 seconds.

Mr. DECONCINI. Mr. President, I guess I should be grateful and thankful and on and on about how nice it is the Senator from Illinois gets 5 minutes and I appreciate him very much yielding to me. You know, if we are going to play these tactics, as soon as we disagree with something on the floor we get recognition and then move to table, we can all play those games. We can all get tough and get our backs up and hang around here a real long time. I do not usually play that game and I believe in debate and then voting on it.

I happen to think the Senator from Illinois has offered a genuine amendment and those who disagree with it have a right to spell it out in levity or whatever way they want to do it.

To play that kind of game, it irritates this Senator so much, so I have not decided what I am going to do, if anything, and maybe nobody cares.

I do not appreciate the "unopportunity" for the Senator from Illinois and this Senator from Arizona, or anybody else around here, who might want to debate this in opposition to the armed services experts here. I recognize their expertise and particularly the President sitting in the chair right now.

But I think we have gone overboard to try to demonstrate how we are going to have to have 90 AWACS out there.

It did not say anything about 90 AWACS here. It talks about getting the sufficient number of rotar-wings and fixed-wings aircraft to pursue and seize interdicting aircraft detected by radar aircraft. It does not say that you have to have 90 out there.

The Senator from Georgia knows that as well as I do and besides the Air Force and the Army and the Navy and the Defense Department is against the Hunter amendment, so what kind of impartial report are you going to get. Just like when we were trying to put the P-3's in the Defense Department authorization who is here lobbying against it—Secretary Weinberger and Secretary Lehman?

They say we are for fighting drugs but we do not want to put in a couple more airplanes to detect them because our mission is something else. I mean we are for fighting drugs. I think the time has come to get tough like everybody says around here and what is the matter with telling the President to get tough. He is the one who has said he is going to get tough. He called

drugs the No. 1 national security issue. It is not the Senator from Arizona saying that.

□ 2200

So I think the Senator's amendment, as modified, makes some real sense. And I think we ought to look at it a little bit more carefully.

It says that the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of narcotics in the United States.

Why should the President not do that? And maybe he is. Maybe he will do some more if we pass this amendment.

It talks about radar coverage within 30 days after the date of enactment of this act. "The President shall deploy radar aircraft in reasonable available numbers."

Does that tell the President to put 90 AWACS up there? You know it does not.

It says pursuit. The Senator from Illinois pointed out very well what hot pursuit means. There is not anybody here or in law enforcement that does not know what hot pursuit is. It does not mean you are going to shoot them down out of the sky.

We had a candidate run in our State once for a law enforcement officer and he had a commercial about shooting down any airplane that flies in from Mexico if they did not identify themselves. Well, fortunately, nobody took him seriously, including the voters.

It says to use the National Guard and Reserve. We are talking about the Arizona National Guard that supposedly has no training; they do not know anything; they cannot stop people.

Well, what have they been doing at the Arizona National Guard is prepare to fight anyplace they are sent and to do any mission they have been told to do. That is what our Guard is for, to defend our country.

And this is a defense of something heinous. This is not just a political game on election night or election eve, as we all talk about it, because it is kind of ironic that we have had 2 years here. I have 10 years here and we never passed a major bill. There were some crime sentencing reforms that were pretty important.

The time is long overdue and I suggest that Members look at this. It is not going to cause us a great deal of harm to pass this amendment that the Senator from Illinois has offered and as he has amended.

I thank the Chair.

Mr. THURMOND. Mr. President, I ask unanimous consent to go for 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. GOLDWATER. I have moved to table. I call for the rule.

Mr. THURMOND. Mr. President, I ask unanimous consent to go for 2 minutes. As manager of the bill, I think I have a right to express my position on it.

The PRESIDING OFFICER. The Chair wishes to state that we are now 3 minutes beyond the time.

Is there objection on the part of anyone to that?

Mr. THURMOND. I ask unanimous consent——

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina?

Mr. DIXON. Mr. President, reserving the right to object.

Mr. President, the Senator from New York State, Senator D'AMATO, has come to the floor. He is a cosponsor and wanted to be heard. There are several people who support this amendment and want to be heard.

Now, I appreciate the attitude of those who do not support this amendment. But I have never, in the time that I have been here, tried to prevent someone from being heard on an issue that they cared about.

Before this debate started, this Senator offered to limit the debate on each side to 10 minutes a side. Now, the managers know that. If they want to cut off those of us who want to be heard on this issue, that is all right. There stands the Senator from New York State. Go ahead and cut us off. Some of us think we are right on this amendment.

Several Senators addressed the Chair.

Mr. THURMOND. Mr. President, as I said, let us give them all 2 minutes. Anybody that wants to talk, give them 2 minutes.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina.

Mr. THURMOND. I think that anybody who wants to talk, give them 2 minutes. It is a big issue.

Mr. GOLDWATER. What is the rule?

Mr. THURMOND. We want to save time. Some of them have talked too long here. But this is an issue of great importance.

The PRESIDING OFFICER. The Chair respectfully requests the Senator from South Carolina to specifically state his request to the Chair.

Mr. THURMOND. I just ask for 2 minutes on this bill.

The PRESIDING OFFICER. Is there objection to 2 additional minutes to be granted prior to the vote?

Mr. GOLDWATER. Mr. President, reserving the right to object.

Mr. D'AMATO. Mr. President, reserving the right to object.

Mr. GOLDWATER. Mr. President, I beat him to it. I do not want to object to the chairman asking for time, but then we are going to have requests from everybody on this issue. I think the rule of tabling calls for no debate. If we are going to break the rules, let us get started.

Several Senators addressed the Chair.

Mr. THURMOND. Mr. President, I am surprised that anybody would try to deny anyone the right to talk for 2 minutes on a bill as important as this. I do not care what Senator he is or who he is. You have a right to be heard in this body. I have not been heard. I am one of the managers of the bill.

The PRESIDING OFFICER. The Senate has before it a unanimous-consent request by the Senator from South Carolina to extend the time for debate for 2 minutes to each Senator desiring to address the bill. Is there objection?

Mr. GOLDWATER. I object.

The PRESIDING OFFICER. Objection is heard.

The Chair now rules that the question is on the motion to——

Mr. NUNN. Mr. President, I ask unanimous consent that each side be given an additional 3 minutes, with the Senator from South Carolina managing his 3 minutes and the Senator from Illinois managing his 3 minutes. I believe if we agree to this we will all get out of here a lot sooner.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Georgia?

Without objection, each side is granted 3 minutes.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I am going to take a very brief period to speak. I want to say first that, in my judgment, this amendment would impair law enforcement. In the second place, I think it will weaken our defense.

The Secretary of Defense is opposed to it. The administration is opposed to it. The armed services members are opposed to it. In my opinion, it will be a great mistake to do it.

I want to say further that the House has already included the Hunter amendment in this bill. The Hunter amendment goes too far now, and then this comes along and aids the Hunter amendment. How could we negotiate with the House if we add any more to the Hunter amendment? I think it would be a great mistake to do it.

I went for the DeConcini amendment. I felt that was reasonable. I think that is as far as we ought to go.

I am opposed to the Dixon amendment. It goes entirely too far. I think it is a dangerous amendment and should be defeated.

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

Mr. D'AMATO. Mr. President, I support this amendment, because it is about time we really use the resources of this country to wage a real war. We have talked a good game, but we have not committed the resources.

Eighteen thousand planes carry cocaine and other drugs into this country. We interdicted at a little more than 1 percent, 204. Most of those that we interdicted we found by accident, they crash landed in a field or the sheriff stumbled upon them.

It is a gross exaggeration made by the opponents to this bill. If you read the bill, it says the President will use radar aircraft and have it deployed when reasonably available—reasonably available. It says, to the extent it is possible, we will use these planes. It says the President, to the extent possible—possible—will meet these criteria.

There is no mandate for using 82 AWACS or 88 E-2C's.

The fact of the matter is 60 percent of the cocaine coming into the country comes in by air; 90 percent of that at night. The points that have been made in opposition do not take into consideration the fact that there is a real war being waged today. I say, let us use the military resources, because those planes that are carrying in their cargo of drugs are as deadly as any Soviets and they are bringing death and destruction to our neighborhoods. I think we have waited long enough.

If you give the military their option, they will not become involved at all. We have had to drag them, over the years, to come forward to say they are going to use their resources. I suggest that we get to the business of really mobilizing a real war.

I yield back the balance of my time.

The PRESIDING OFFICER. The Chair wishes to advise the Senate that the proponents have 1 minute and 16 seconds and the opponents 2 minutes and 10 seconds.

Who yields time?

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I yield back my time.

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

The PRESIDING OFFICER. All time having been yielded back, the question is on the motion of the Senator from Arizona [Mr. GOLDWATER] to table the amendment of the Senator from Illinois [Mr. DIXON]. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Washington [Mr. GORTON], the Senator from South Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR], is absent because of death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 72, nays 14, as follows:

[Rollcall Vote No. 299 Leg.]

YEAS—72

Andrews	Glenn	McClure
Armstrong	Goldwater	Melcher
Baucus	Gore	Metzenbaum
Biden	Gramm	Mitchell
Bingaman	Harkin	Moynihan
Boschwitz	Hart	Nunn
Bradley	Hatch	Packwood
Broyhill	Hatfield	Pell
Bumpers	Hecht	Proxmire
Byrd	Heflin	Rockefeller
Chafee	Heinz	Roth
Chiles	Helms	Rudman
Cohen	Hollings	Sarbanes
Cranston	Humphrey	Sasser
Danforth	Inouye	Simpson
Denton	Johnston	Specter
Dodd	Kassebaum	Stennis
Dole	Kasten	Stevens
Domenici	Laxalt	Symms
Durenberger	Leahy	Thurmond
Eagleton	Levin	Trible
Evans	Lugar	Warner
Exon	Mathias	Weicker
Ford	Matsunaga	Zorinsky

NAYS—14

Abdnor	Grassley	Murkowski
Burdick	Hawkins	Nickles
D'Amato	Long	Riegle
DeConcini	Mattingly	Wilson
Dixon	McConnell	

NOT VOTING—14

Bentsen	Kennedy	Quayle
Boren	Kerry	Simon
Cochran	Lautenberg	Stafford
Garn	Pressler	Wallop
Gorton	Pryor	

So the motion to lay on the table amendment No. 3059 was agreed to.

□ 2230

Mr. DOLE, Mr. MATTINGLY, and Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, let me indicate that with some cooperation, we can finish here before midnight. It is going to take some cooperation. I know some Members have concerns they want to raise. Let me indicate again I do not know that this is going to be the perfect bill. I am not certain we have to do everything in this bill tonight. Maybe we can do it next year and not clean up everything this year. I would like passage of a drug bill in this Senate. We are very close.

We have the continuing resolution on Monday, Tuesday, and Wednesday of next week, probably Thursday. We have the trial. I would guess that whether we go out or not, the House is going to be itching to go out of here next week. If we go to conference on the House bill, we will have to finish this tonight. Let us see how far we can go in the next hour and if we are still a long way off—and some have some questions about how we are going to pay for this and I do not disagree with them.

Mr. BYRD. Mr. President, will the majority leader yield?

The PRESIDING OFFICER (Mr. TRIBLE). The minority leader.

Mr. BYRD. Mr. President, I have asked the distinguished majority leader to yield.

Mr. DOLE. I yield, Mr. President.

Mr. BYRD. I share the hope of the majority leader and I believe we have good reason to share that hope. May I say, though, about Monday, it is important, as the distinguished majority leader has said earlier, that we get amendments in early Monday on the continuing resolution, the chairman of the committee [Mr. HATFIELD] will have up the continuing resolution and the majority leader and I are hopeful that we can get action on amendments and hopefully stack votes on those amendments until about 4 o'clock.

I am encouraging our people, if they have amendments on the continuing resolution, to get them in early Monday. Let us not wait until 4 o'clock to start off with amendments, because we have a long way to go and many promises to keep.

So I am taking this occasion to say with the majority leader that we want to finish this tonight, at least have up until the final vote, and hopefully carry over the final vote with no amendments. But let us get our amendments in on the continuing resolution early on Monday.

Mr. DOLE. That is going to be critical. I am not certain we can honor the wish of many Senators to be protected until 4 o'clock. If the managers of the bill come over here and nobody will be here to offer amendments, it will be a little frustrating. Unless there are no amendments to the conference report, which will be the best of both worlds, but I assume there will be one or two.

Mr. WEICKER. Will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. WEICKER. I do not wish to mislead my colleagues, particularly the distinguished majority and minority leaders, but I have a problem. I may as well put it out on the table.

The fact remains that in this bill, there is $150 million additional money called for to provide funds for the local school districts to provide drug education programs. There is an additional $175 million being added to the ADAMHA block grant; $50 million of

the $175 million goes directly to the block grant; $125 million goes to those States with a high incidence of drug abusers. We have an additional $50 million for the distinguished Senator from Ohio [Mr. METZENBAUM] all for a grand total of $375 million for the programs under my supervision in terms of appropriations.

I am up against my 302(b) allocation with not one nickel left. The distinguished chairman of the Appropriations Committee is not here, but I think I am safe to say, being a member of that committee, that the committee is up against its allocation as a whole. Unless somebody can tell me where we are going to get $375 milion, I am not going to be part of, nor will I permit that type of charade to take place. If this is important, if this is a priority, then I suggest that we not only give all the authorization and all the speeches and all the amendments, but we find $375 million for rehabilitation, for school education, and for the alcohol, drug abuse, and mental health block grant.

You go ahead and tell me if you have it. If it is new money, new allocations, whatever, fine, I have no problem. But right now that money is not here and my colleagues should know exactly where we sit on this matter.

Mr. EVANS. Will the Senator from Connecticut yield?

Mr. WEICKER. I will yield on the time of the distinguished majority leader. But the funding issue is my problem and I do not want the majority leader—who, I know, along with many others, has been pressing hard for this legislation—to all of a sudden come to the end of the amendments without my colleagues' understanding that this is a rather large problem that has not been faced up to and that everybody is going to object to the Senator from the State of Connecticut for holding them up from getting home. I do not know if anybody else feels as I do, but somewhere along the line, if it is important, pay for it.

I would like to yield for a minute or I hope the majority leader will yield to the Senator from Washington.

Mr. DOLE. We shall try to address that while we are taking up the next couple of amendments.

Mr. EVANS. Mr. President, I want to say I agree wholeheartedly with the Senator from Connecticut. I think he is absolutely right. This is not the only bill but the most egregious and recent one where we have just chosen to blithely pile on new responsibilities on Federal agencies and choose not to pay for them. Somehow, some way, we have to start paying for what we would like to spend.

I say to the Senator from Connecticut that I do have a way to pay for it. I have an amendment here that I am perfectly prepared to propose and I know very well what will happen to it. I cannot think of a better way to pay not only for what he has to do but for the other elements of the bill which add up to close to $700 million or $800 million in the next year and close to $1 billion in the years afterwards.

The administration does not like taxes very well. They want to duck and dodge and they have not provided any help or any ideas as to where to get money to pay for this bill. I cannot think of anything but what they do like and that is user fees. They seem to like user fees pretty well and I cannot think of a better user fee to help handle this situation than a slight increase on the other two addictive drugs used in this country.

This amendment calls for a 12.5-cent additional tax on beer, wine, and other spirits and tobacco to raise us close to $800 million in the first year and close to $1 billion in the years after this year. It fits in with precisely what we have to do. I am fully prepared to offer that and I have a suspicion that I know what will happen. But I am going to offer it unless somebody comes up with a better idea and somebody comes up with a good answer to the Senator from Connecticut.

Several Senators addressed the Chair.

Mr. DOLE. Mr. President, I am not going to yield any more. Let us go to debate on the amendment.

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. Does the majority leader yield?

Mr. DOLE. I yield.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 3060

(Purpose: To provide for the imposition of the death penalty for certain continuing criminal enterprise drug offenses)

Mr. MATTINGLY. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Georgia [Mr. MATTINGLY], for himself, Mrs. HAWKINS, Mr. D'AMATO, and Mr. DENTON proposes an amendment numbered 3060.

Mr. MATTINGLY. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill add the following section:

SEC. . DEATH PENALTY FOR CERTAIN CONTINUING CRIMINAL ENTERPRISE DRUG OFFENSES.

(a) ELEMENTS OF OFFENSE.—Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "(a) Any" and inserting "(a)(1) Except as otherwise provided in this section, any" in lieu thereof;

(2) by striking out "; except that if" and inserting ". If" in lieu thereof; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and thereby knowingly causes the death of any other individual, the individual so engaging shall be subject to the death penalty in accordance with this section.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH PENALTY.—

"Hearing Required With Respect To The Death Penalty

"(d) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"Notice By The Government In Death Penalty Cases

"(e)(1) Whenever the Government intends to seek the death penaltiy for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause known.

"HEARING BEFORE COURT OF JURY

"(f)(1) When the attorney for the Government has filed a notice as required under subsection (d) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(g) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (j) and (k), or

any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (k), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(h) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (k), found to exist. If one of the aggravating factors set forth in subsection (k)(1) and another of the aggravating factors set forth in subsection (k), is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of any aggravating or mitigating factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (k)(1) is not found to exist or an aggravating factor set forth in subsection (k)(1) is found to exist, but no other aggravating factor set forth in subsection (k) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagaph (k)(1) and one or more of the other aggravating factors set forth in subsection (k) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(i) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(j) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than 18 years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS

"(k) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim; or

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (a)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) The violation of this chapter in relation to which the conduct described in subsection (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(8) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(10) The defendant committed the offense against a judge, a law-enforcement officer, or an employee of a penal or correctional institution, while that victim was performing official duties or because of that victim's status as a public servant of the United States, or a State or political subdivision of the United States. For purposes of this paragraph the term 'law-enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(1) In any hearing held before a jury under this section, the court shall instruct the jury in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(m) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.".

"APPEAL IN CAPITAL CASES

"(n)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with the failure to find sufficient mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

Mr. MATTINGLY. Mr. President, I hope we shall be able to dispose of this amendment in a relatively short period of time. I rise to urge the support of my colleagues for a death penalty amendment. I believe that it is a very essential component of any serious, comprehensive effort to control drug trafficking in this Nation.

The bill which we have before us does enhance this Nation's law enforcement capabilities. It provides for stricter penalties for those who engage in the illegal drug trade. I support these. But I believe that if we mean

business, if we expect to stop the violent criminal activities of the drug kingpin, then we cannot withhold the ultimate judicial sanction. We must make the death penalty available against this menace of society who wantonly kills, who will stop at nothing to turn a profit and who jeopardizes the welfare of the Nation.

As my colleagues know, I have previously introduced legislation which would make the death penalty available to juries in certain cases. And the Republican Drug Control Act, S. 2850, also contains such a provision.

My colleagues are also aware that earlier this month the House of Representatives, by an overwhelming vote of 296 to 112, approved a death penalty for drug dealers amendment offered by Representative GEKAS. At last, the full House was afforded an opportunity to pass judgment on the issue. The statement was emphatic, and I believe it accurately represents the sentiment of the majority of Americans. This amendment is identical to the House language.

We have been told by some of my Senate opponents that we must not attempt to include a death penalty sanction in this bill because it is controversial and they have threatened to filibuster the bill and therefore kill the bill! Mr. President, the actions of these murderous drug kingpins are controversial. More than that, they are outrageous. And they cannot be tolerated in this society. Those dealers must know that they cannot expect to kill and to destroy without jeopardizing their own lives.

I firmly believe that this amendment serves as a deterrent. These drug kingpins, as I have suggested before, are in the trafficking business for one reason—to turn a profit. No matter what the cost and no matter who they injure or kill. In assessing their activities, I believe they will weigh the risks of death against the profits. The possibility of the loss of their own life is indeed a heavy risk. We must remember that the types of criminals about which we are speaking today are cold and ruthless.

One clear example of a murder that can be tied to drug kingpins was the killing several years ago of Federal District Judge John Wood in Texas. The judge was murdered by a hit man who was allegedly working on behalf of a major drug dealer named Jimmy Chagra. Judge Wood had been involved as a judge in some prosecutions of Chagra's narcotics operations. Chagra himself was acquitted of murder, but three others, including Chagra's brother and sister were convicted of offenses relating to Judge Wood's murder. It is significant to note that Chagra has since been indicted for the attempted murder of an assistant U.S. attorney who was the chief narcotic prosecutor in San Antonio.

This illustrates clearly, I believe, that the vicious actions of major drug dealers are deliberate, and not the result of passion. But of one thing we can be certain. Imposing and carrying out the death penalty is a 100-percent guarantee that one drug dealer at least will be permanently deterred from such future activities.

Again, Mr. President, let me clarify for my colleagues that this amendment targets kingpins, those who intentionally kill in the course of a continuing drug enterprise, the Mr. Bigs, those individuals who put the public at risk daily, who would kill anyone—a law enforcement officer, a judge, a prosecutor—who would stand in the way of their enterprise. And that enterprise itself is deadly. It enslaves our children, killing some of them. It undermines the very values which bind this Nation together and which we hold dear.

Mr. President, this amendment is critical because it will demonstrate to the American people whether or not we are serious about ridding America of the scourge of drugs. If we are interested in effective action more than rhetoric, we must approve this amendment. Let us face facts. Drug kingpins and killers are the enemies of this Nation. We are engaged in war with them. We must make available to ourselves the best and most effective weapons. In my view, that is what this amendment would accomplish, and I urge its adoption.

□ 2240

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York (Mr. D'AMATO).

Mr. D'AMATO. Mr. President, I rise to support my colleague, Senator MATTINGLY, in this amendment, which calls for the death penalty for those who are involved in a continuing criminal enterprise, who either themselves carry out a killing or more often than not have someone from their organization undertake the killing or death of another individual.

Mr. President, I believe we erred when we did not support the use of the military. I think the interdiction of the drug runners becomes difficult, if not impossible, without the use of those military resources.

But there is another area where we can do something, where we can say that we give more than rhetoric and lip service, or that when we identify those continuing criminal enterprises, as we are beginning to do, when we target the leaders, when we are able to turn someone who has been caught and get them to cooperate for fear that they will face incarceration for the rest of their life—and under this bill, if this bill is passed, this proposal, the fear that they themselves may have to forfeit their lives—it will make much easier the task of our law enforcement agencies to get to the heart of those criminal enterprises.

I believe that this legislation can be used very successfully in beginning to make it possible for us not only to get the street level dealers, the middlemen, so to speak, but to make it possible for us to penetrate with the fear of that death penalty those who have intentionally carried out a murder. And we have had many occasions where law enforcement officers have picked up the triggermen or those who ordered the hit, and with the possibility of the death penalty facing them I believe the opportunity for us to get the higher-ups becomes a more substantial probability.

There is another side to this, and Senator MATTINGLY touched on it. These people are bringing death and destruction to our communities. They are poisoning the environment for our youngsters. They have no compunction in terms of ordering the elimination of those who pose a threat to their enterprise, whether it is law enforcement officers or whether it is others who are interfering in their territory or whether it is to enforce their code of violence, to see to it that they are more effective. They are ruthless and life means little, if anything, to them.

In New York, it is not uncommon to pick up the paper and see two, three, four, five, six people in a family wiped out—women, children. Can anyone here really say that someone who has ordered the execution of people in cold blood, including men and women, should not be subjected to the death penalty?

I do not believe that our society should countenance that and I do believe it is long past time for us to say that we will enact legislation that will give to our law enforcement officers the tools to pierce those veils of secrecy and yet to get to not only the executioner but to the person who set in motion those executions.

I hope we pass this amendment and give some substance to our desire to undertake a successful battle against those who bring drugs into our country and those who traffic in drugs once in our borders.

□ 2250

Mrs. HAWKINS. Mr. President, I applaud the comments of the Senator from Georgia [Mr. MATTINGLY] and the Senator from New York [Mr. D'AMATO].

The time has come this morning to discuss the most controversial aspect of the drug bill. There are those who would strike out the death penalty provision. There are those who tell us that they will filibuster for this provi-

sion. There are those who would offer eloquent justifications and appeals here on the floor. I would like to counter with the voice of the people. We do not hear from the people very much. We have been here on the floor all day today and many days previous to this.

However, in anticipation of this issue coming to the floor, I sent out an alert to my constituents. I wanted to hear from the people who put me here. I must say, Mr. President, that the response has been remarkable.

We all know that drugs are on the minds of the American people. But until you actually hear from them directly, you never know the anger, the frustration, the fury, and the fear. These letters are raw. I could bring huge boxes of them here. They are equal in eloquence to everything we are going to hear on the floor on this subject this evening. This is the voice of the American people. I urge my colleagues to listen:

Dear Senator Hawkins . . . If we do not use stronger medicine we shall never succeed . . . The Congress should enact a new law lifting temporarily the present right of individuals caught in financing, pushing, selling or smuggling drugs . . . The verdict should be life imprisonment or execution by firing squad or hanging all this done within one week . . . Of course, such an action would bring a howl of protest from our super-liberals who prefer to protect the criminals, and from lawyers who receive very large fees from these criminals . . . Why should we, in the name of humanity, hesitate to get rid of a few worthless individuals if we can eradicate their horrible trade.

Dear Senator Hawkins . . . As with anything you want to stop, you have to get to the source of it. That means death to the pushers. Which is more important? Protecting the pushers (who don't care anything about our country) or protecting the future of a great country that is rapidly falling apart. Wake up Congress, get your heads out of the sand and do something before it's too late.

Dear Senator Hawkins . . . As an ex-Special Agent, FBI, I know that if the prospect of big money is great enough, many criminals will risk being caught . . . Drug importers and dealers actually are selling poison to the public—including our chidren—I suggest that you introduce legislation making the punishment fit the crime. It should have a salutory effect by making headlines throughout the nation, making it quite clear that we are no longer so concerned with rehabilitating drug operators as we are with exterminating them without mercy.

Dear Senator Hawkins . . . Here's what I know (not what I think). I support immediate penalties . . . For example a dope seller, death immediately. This is war you know. Let's quit these baby antics! Please Paula Hawkins how can I help? I hate drugs and I wish I knew some formula to fight this war. In the mean time, Please ask our judges to do their most precious duty.

Dear Senator Hawkins: The drug abuse effort is for the birds as it stands now. The only language those criminals understand is drastic measures. They are the scum of humanity, there is not one ounce of decency left in them. The best way to deal with them is put them to the nearest wall and let them have it. After all, they deal in murder themselves.

I have more, Mr. President, many more. I have stacks of letters in my office just like these. Their sentiment could not be expressed any more clearly by any Member of this body. The American people have had it. They are fed up, and they are angry. They want action, and they want it now. They believe that the time for talk ended.

The American people are ready for this bill and the changes it offers. While I know that many of the people's legislators in this body might feel differently, I hope that hearing their cries for help will make each Senator think twice. I hope we will vote for the death penalty, the only cure for an ailment that is killing this Nation.

Mr. LEVIN. Mr. President, this is a complicated amendment. The amendment raises a lot of questions and should be considered in detail. Twenty minutes of debate is not enough.

It is deserving of debate and considerations by the Senate.

I therefore oppose tabling the amendment. Many others who oppose the death penalty also oppose tabling this amendment.

Mr. EAGLETON. Mr. President, in 1972, the Supreme Court struck down virtually every death penalty statute in the country, holding that they created a substantial risk that the punishment would be imposed in an arbitrary, capricious, and discriminatory manner. More recently, in the case of Zant versus Stephens the Supreme Court held that the single most important function of a constitutional death penalty scheme is that it provides some guidance to the jury in deciding who should live and who should die.

Mr. President, this death penalty scheme is so broadly written that it fails to provide the type of guidance that the Supreme Court has said is constitutionally required.

I suggest my colleagues read on this subject matter "Capital Punishment in the United States" by Professors Bowers and Pierce (1980).

I will vote to table the Mattingly amendment.

Mr. DURENBERGER. Mr. President, I rise to oppose with all the conviction I possess, this ill-timed, unfounded, and unconscionable amendment to this antidrug bill. Addition of a death penalty to this amendment to this bill is the ultimate attempt to rush an extremely controversial choice through while the attention of the Nation is distracted.

Let me begin by sharing with my colleagues a few paragraphs that appeared on January 24 in Time magazine:

The chair is bolted to the floor near the back of a 12-ft. by 18-ft. room. You sit on a seat of cracked rubber secured by rows of copper tacks. Your ankles are strapped into half-moon-shaped foot cuffs lined with canvas. A 2 in.-wide greasy leather belt with 28 buckle holes and worn grooves where it has been pulled very tight many times is secured around your waist just above the hips. A cool metal cone encircles your head. You are now only moments away from death.

But you still have a few seconds left. Time becomes stretched to the outermost limits. To your right, you see the mahogany floor divider that separates four brown church-type pews from the rest of the room. They look odd in this beige Zen-like chamber. There is another door at the back through which the witnesses arrive and sit in the pews. You stare up at two groups of fluorescent lights on the ceiling. They are on. The paint on the ceiling is peeling.

You fit in neat and snug. Behind the chair's back leg on your right, is a cable wrapped in gray tape. It will sluice the electrical current to three other wires: Two going to each of your feet, and the third to the cone on top of your head. The room is very quiet. During your brief walk here, you looked over your shoulder and saw early morning light creeping over the Berkshire Hills. Then into the silent tomb.

The air vent above your head in the ceiling begins to hum. This means the executioner has turned on the fan to suck up the smell of burning flesh. There is little time left. On your right, you can see the waist-high, one way mirror in the wall. Behind the mirror is the executioner standing before a gray marble control panel with gauges, switches and a foot-long lever of wood and metal at hip level.

The executioner will pull this lever four times. Each time 2,000 volts will course through your body, making your eyeballs first bulge, then burst, and then broiling your brains. * * *

This description brings home what we are debating today. It is not neat, clean, and painless. Society putting another human being to death is messy, painful and inhumane.

My opposition to this bill is a manifestation of my belief in the unique worth and dignity of each person from the moment of conception, a creature made in the image and likeness of God. It is particularly important that this belief be affirmed with regard to those who have failed or whose lives have been disturbed by suffering or hatred, even in the case of those who by their actions have failed to respect the dignity and rights of others. This recognition of the dignity of all human beings is a compelling factor in my decision to oppose this measure—we should be unwilling to treat as expendable the lives of even those who have taken human life.

By enacting this legislation, we would be refuting the dignity of human life and sanctioning the current trend of the State's toward increased executions. If we extend this trend to the level necessary to make the capital system viable, the execution rate would have to rise significantly above that countenanced in

modern times. Before there could be any reduction of the death row population, which is now over 1,000, it would be necessary to kill 200 defendants each year just to offset the new arrivals on death row. In the decade of the 1960's, prior to the moratorium on execution, there was an average of 19.1 executions per year. The sixties were atypical, however, because of the developing moratorium and the large number of steps leading up to it. Potentially more representative are the 1950's, when the average number of executions per year was 72, or in the 1940's, when it was 128. The 1930's had the highest annual rate, with an average of 152 executions per year. During this period, from 1936-66, the public support for the death penalty fell consistently. Is it going to be different when as a nation we begin to approach 200 executions per year? No; the moral consensus of society will be an abhorrence of these executions, and today, we have a chance to be in the vanguard of public opinion and send a message to the States against capital punishment.

I regret that the vehicle to send this message is a bill that would reinstitute capital punishment. We should be debating a measure that would abolish capital punishment. As the U.S. Catholic Bishops stated:

> Abolition would send a message that we can beat the cycle of violence, that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime. It is a manifestation of our freedom as moral persons striving for a just society. It is also a challenge to us as a people to find ways of dealing with criminals that manifest intelligence and compassion rather than power and vengeance. We should feel such confidence in our civic order that we use no more force against those who violate it than actually required.

Although the compelling reason I oppose this bill is my commitment to the value and dignity of human life, other grounds exist for rejecting this measure.

I oppose the bill because a compelling rationale for the death penalty does not exist. Proponents of the death penalty say that the presence of the possibility of death will deter criminals from their murderous acts. There is no solid evidence to support this contention and common sense should tell us that this is not the case. We are talking about murderous criminals, people who have the capacity to kill another human being are not held by the rational constraints that bind the rest of us. Can you honestly say that a person who is about to pull the trigger will pause and say to himself that he should stop because of the remote possibility that he could be put to death? You and I know that just does not happen.

Since deterrence is not a basis for capital punishment, what about an eye for an eye or in technical terms the retribution theory? Admittedly, capital offenders should be punished for their crimes, but is one murder vindicated by committing a second murder? I think not. In fact, it has been argued that the second murder is more reprehensible because it is officially sanctioned and done with great ceremony in the name of us all. This second killing is worse than the first. Murder committed by the psycopath or the cold-blooded killer is a random event not subject to control, but a well-orchestrated modern execution is well thought out and is horrible because the Government is always in control; it knows better, but kills anyway.

The legal history of our country's struggle with the death penalty is well known. Significant progress has been made to eliminate the imposition of the death sentence in an unfair and discriminatory manner. Currently, if specific evidence of bias or discrimination in sentencing can be provided for particular cases, the higher courts will not uphold sentences of death in these cases.

But we must also reckon with a legal system which, while it does provide counsel for indigent defendants, permits those who are well off to obtain resources and the talent to present their case in as convincing a light as possible.

The legal system and the criminal justice system both work in a society which bears in its psychological, social, and economic patterns the mark of racism. These marks remain long after the demolition of segregation as a legal institution. The end result of all this is a situation in which those condemned to die are nearly always poor and are disproportionately black. Thus, 47 percent of the inmates on death row are black, whereas only 10 percent of the American population is black.

Admittedly, abolition of the death penalty will not eliminate racism and its effects, an evil which we are called to combat in many different ways. But it is a reasonable judgment that racist attitudes and the social consequences of racism have some influence in determining who is sentenced to die in our society. This I do not regard as acceptable.

In advocating my opposition to this bill, the argument about the possibility of mistake cannot be overlooked. As Senator LEVIN has so thoughtfully reiterated on this floor, our judicial history contains examples of people sentenced who later were proven to be innocent of the crimes for which they were convicted. Carrying out the death sentence leaves no margin for error where errors have been proven to exist. Additionally, inflection of the death penalty extinguishes possibilities for reform and rehabilitation for the person executed. It cuts off the possibility of a new beginning and of moral growth in a human life which has turned away from the inherent capacity for good, which we are born with, to evil.

I vote no on this amendment, thereby affirming my commitment to the sanctity of human life in all its stages. I do not wish to equate the situation of criminals convicted of capital offenses with the condition of the innocent unborn or of the defenseless aged or infirm, but I do believe that the defense of life is strengthened by eliminating the possibility of judicial authorization to take human life.

Mr. HATFIELD. Mr. President, drug use and drug trafficking are two of the most serious problems facing our society. The drug problem is a constant drain on the productivity and health of our Nation's people. Neither the young, old or middle aged are exempt from the sinister arm of the drug-dealer which reaches into the homes and hearts of Americans and turns them upside down. The drug pusher does not care whether you are rich or poor, educated or uneducated or whether you have a family, a job or are carrying a baby. The drug pusher first wants your interest, then your money and eventually he wants your life.

There is no question that short of a national mobilization against this problem, it will continue to grow like an insidious cancer. Eventually, if unabated, this cancer will spread to such a degree that it will suffocate the creative resources and productivity that energizes our societal life. Action must be taken to excise this cancer. Congress must play a key part in this effort. The drug bill before us can be an important step. It authorized needed assistance to Federal, State, and local officials for drug enforcement, drug education and drug rehabilitation.

Mr. President, while I support efforts to combat the growing drug problem, I am deeply concerned over several amendments being discussed to the proposed Senate bill, particularly the establishment of a Federal death penalty. In our fervor to "get tough on drugs," we must guard against adopting any means to achieve that end. In addition, the nationwide clamor for action on the drug problem, must not be used as a smoke screen for enacting judicial reforms many of us believe pose serious constitutional and moral questions. Such issues require full and fair debate. And I fear, Mr. President, such consideration is impossible during the closing days of the 99th Congress, given the list of "must pass items." This "take it or leave it" mentality will place Senators and Representatives in the dangerous position of supporting drug legislation that sacrifices the rights and liberties of Ameri-

cans under the guise of wiping out drugs. After all, no one wants to look "soft on drugs."

Mr. President, during the debate in the House of Representatives on a death penalty amendment to the drug bill, proponents referred to it as the "ultimate weapon," and that it is part of the great movement in the war against drugs. Well, Mr. President, I resent the death penalty being used as a litmus test for one's commitment to fighting the drug problem or to the sanctity of life. My record clearly shows a consistent commitment to the sanctity of life and it is that very commitment that underlies my adamant opposition to capital punishment. The death penalty brings into sharp focus the matter of a society's adherence to the sanctity of life and the responsibilities incumbent upon all of us to protect this precious grant from our Creator.

Mr. President, we live in a world of constant danger. All of us long to live our lives in peace. We long to rid the world and our society of the threat of war and violence, and to find someway to reduce the tension between the superpowers that keeps this world an impulse away from nuclear holocaust.

As Americans, we consider ourselves the principle peacemakers. Our 210 year history distinguishes the United States as a peace seeking country, and this quest for peace is undergirded by our strong sense of repulsion each time a sovereign state is attacked or occupied by tyrants, tyrants whose respect for life extends only as far as their own self-interest.

But I am here today to say that those proclamations for peace are hypocritical. I do not believe peace is possible abroad when there is violence at home. I do not believe the United States will ever be at peace with any country until it is at peace with itself. And we will never be at peace with ourselves until we cease destroying life and cease enhancing our capabilities to exterminate all life.

While abortion has assumed the status of the most visible agent of violence in America, it is by no means the only permissible campaign against life taking place in America. For the last several years the electric chairs have been smoking from exhaustion as more and more States turn to capital punishment to satiate the public's desire for vengeance against criminals who commit brutal acts of violence. Since the Supreme Court's decisions upholding the constitutionality of certain State death penalty procedures in 1976, 47 executions have taken place in the United States. Well over half of the executions have taken place since 1983. Clearly the pace is quickening.

The resurgence of the use of capital punishment is but a symptom of a deeper problem. I believe this resurgence is a reflection of a new mean spirit sweeping across America. Ignited by a frustration over the growing drug problem and the high level of violent crime in our Nation, this new mean spirit renounces reconciliation and instead heralds confrontation. Look at the state of our legal system. Our courts are suffocating under piles of pleadings of lawyers who help people litigate instead of mediate.

This spirit of confrontation instead of cooperation, this spirit of aggravation instead of reconciliation, condone the taking of life as a means of embracing life. It responds to violence by engaging in violence. In my view, Mr. President, if we believe in the sanctity of all human life, then no premeditated taking of life is justifiable. I have come to this position based on my observations as Governor and Senator of crime and punishment.

Mr. President, my experience with the death penalty spans over a quarter of a century. As the newly-elected Governor or Oregon in 1958, I had to make probably the most agonizing decision of my political career in ordering an execution. The State of Oregon had in place a death penalty statute at that time and the people of Oregon were on record as being opposed to the repeal of that statute. However, as Governor, I possessed the power to commute the sentence of that man who had been sentenced to death.

I spent hours in prayer and in deep personal anguish regarding the decision set before me. I could either commute the sentence under the legal power vested in me as Governor, or uphold the State's constitution which, under oath, I had committed myself to uphold. After much soul-searching, I decided that the trust that the people had placed in me to represent their will must be honored, notwithstanding the conflict of that choice with my own personal convictions. As Governor, I believed this fulfilled my constitutional responsibility to carry out justice on behalf of the people of Oregon. I do not believe, Mr. President, I would make that same decision today.

During my tenure in the Senate, I have confronted repeatedly this issue on the policy level. Legislation to establish a Federal death penalty has been pending in the Senate since the 93d Congress. The Senate has twice voted on death penalty legislation, but Congress has taken no final action. I have listened to the arguments raised by proponents of the death penalty and remain unconvinced. At the heart of it all, Mr. President, is my view that the death penalty is immoral, unconstitutional and lies outside the legitimate authority of government.

Let me turn now to discuss briefly several reasons which buttress my firm opposition to the death penalty.

First, the sentence of death has not been proven a successful deterrent. Any thoughtful examination of deterrence exposes the truth of the matter. By and large people who commit the heinous crimes for which they might get sentenced to death either expect to get away with it or they act under pressures of the moment. Those who expect to get away with it, need to know they will not. They need to know they will be caught and punished severely. However, in this case, life imprisonment should provide a sufficient deterrent.

In the case of unpremeditated murders, good common sense is proof enough. These murders are deterred by nothing. They do not give detached, introspective reflection to the consequences of their actions. They are persons ruled by impulses, and because the sentence of death only applies to criminals who commit especially heinous crimes, they are persons often mentally or emotionally impaired, alienated from society themselves. For these persons, it is hard to imagine how any punishment, however, severe, would be a deterrent.

Empirical studies examining State homicide rates have led to inconclusive results. States that have abolished the death penalty generally have not shown a statistically significant increase in their homicide rate. In fact, one study with which I am familiar showed that Michigan, which did away with the death penalty, had an identical homicide rate to its neighboring States which kept their execution statutes. However, there are other studies that point in the other direction. The facial logic of deterrence is undeniable. The effectiveness of deterrence, on the other hand, is negligible at best.

Second, Mr. President, the sentence of death has been handed out in such an arbitrary manner that it perverts even the most rudimentary notions of justice. This arbitrariness is demonstrated by a reported case in which one codefendant was executed while his equally guilty fellow offender was eligible for parole in 6 years. Another illustrative example involved a case in which the triggerman in a murder got a term of life imprisonment while the nontriggerman was executed. Justice Brennan, in the famous *Furman* v. *Georgia* case, framed this issue as follows:

> When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system.

A lottery system Mr. President. This is the concept Justice Brennan has chosen to describe the death penalty in America. Who are the losers of this lottery? The poor, the uneducated, those criminals lacking the resources necessary to garner the legal representation available to the lottery winners.

Justice Marshall in a speech before the Judicial Conference for the Second Circuit, pointed to the following two aspects as further exacerbating the problem:

First, capital defendants frequently suffer the consequences of having trial counsel who are ill-equipped to handle capital cases. Death penalty litigation has become a specialized field of practice, and even the most well-intentioned attorneys often are unable to recognize, preserve and defend their clients rights.

Justice Marshall continues:

The second problem relates closely to the first. It involves what I have called the Rush to Judgment—that is, the willingness of the courts and the State governments to expedite proceedings in order to bring about speedy executions. I would have thought that cases involving the death penalty might receive especially cautious handling and attention to minimize errors. The reality, however, is exactly the opposite. Contrary to popular perceptions, all capital defendants have not spent years filing frivolous claims in Federal courts. Many of these defendants have not yet filed any federal claims when their execution dates are set.

Who are the losers Mr. President? They are those unable to afford expert counsel both before and after receiving their death sentence. They are those who are on death row, not by virtue of the severity of their crime, but because of the inequitable nature of the system.

One need not be a Justice of the Supreme Court or a constitutional scholar to recognize the arbitrary manner in which the sentence of death is imposed. If any pattern is to be gleaned from the individuals waiting on death row, it is one based on race and nationality. Statistics compiled nationally from 1930 through 1967 reveal that black persons, although never exceeding more than 12 percent of the population, constituted over 53 percent of all those executed during this period. Today, there are approximately 1,800 inmates on death row. According to the NAACP Legal Defense Fund, over 41 percent of those inmates are black.

A 1983 study by Prof. David C. Baldus examined the discrimination question from a different angle. His study found that if a murder victim was white, the defendant's changes of being condemned to die were twice as high as those of a defendant whose victim was black. Other more recent studies of death sentences in selected States also found that blacks convicted of killing whites were more likely to receive the death penalty. Clearly, Mr. President, racial prejudice continues to taint our criminal justice system through which convicted persons are sentenced to death.

The Supreme Court has agreed to review this issue during its upcoming term. The case, *McCleskey* v. *Kemp*, will give the Court a chance to examine what is in my view, a clear case of discrimination in the application of the death penalty. It is my hope that the Justices will concur in the circuit court's opinion, and declare the Georgia statute unconstitutional and effectively remove this stain on our Nation's collective conscience.

The third objection I would like to raise is that I oppose the death penalty because the sentence of death is an inappropriate response to this Nation's malfunctioning criminal justice system. The public cries for a meaningful penalty for a murderer, and the criminal justice system responds with a "life imprisonment" sentence which is something far less than life imprisonment. A 1984 Justice Department study found that among 840 convicted murderers sentenced to life imprisonment, the median time served was only slightly more than 5 years. That is the problem, Mr. President.

Twenty years ago public opinion polls on the death penalty showed 45 percent of Americans were in favor and 43 percent were opposed. Today these polls are reporting that 72 percent of the public favor the penalty of death. Why the change Mr. President? Has there been a dramatic moral shift in favor of capital punishment? Possibly, but I think not. Americans are simply fed up with our corrections system and see the death penalty as the only viable alternative to protect our society. A recent Gallop Poll indicated that support for capital punishment would drop by 16 percentage points if life imprisonment meant simply that.

Such frustration on the part of the American people is understandable. Our corrections system is our of control. Today it is bursting at its seams and ready to explode because of overcrowding. The year 1985 marked another record year for incarcerations. By the end of the year over 500,000 persons were behind bars. The increase for 1985 brought the total growth in the prison population since 1977 to over 200,000, an increase of 68 percent in 8 years. Thirty-four States reported operating at approximately 100 percent or more of their highest capacity. Because of overcrowding 29 of 52 jurisdictions reported prison backups early releases.

Spending for prisons and jails rose 50.9 percent during the first part of the decade. A recent Bureau of Justice statistics report found that $170 per American was spend on police, courts and prisons. The cost of feeding and housing a prisoner has reached $15,000 to $20,000 annually. In my home State voters have turned down four prison bond measures since 1980. In announcing his resignation, a former superintendent of the Oregon State Penitentiary, summarized the situation as follows, "The whole criminal justice system in this State is near collapse and nobody's doing anything about it, so I am just going to leave."

It is no wonder that the public has turned to the death penalty as the panacea for our crime and corrections ills. Such problems, however, do not provide sufficient justification for opting for execution instead of life imprisonment. Let us keep in mind that of the over 500,000 people in prison, only 1,800 of them are on death row. On the other hand, about half of this Nation's prison population is serving time for nonviolent offenses.

If we are to address the overcrowding question and the skyrocketing costs of the system, we should begin with the nonviolent offenders, and not by cranking up the electric chairs. Community service, restitution and other alternatives forms of punishment provide viable options to incarceration, options which both insure public safety and save the taxpayers millions of dollars. You could execute all the prisoners on death row and the crisis in our corrections system would virtually remain unchanged.

Mr. President, there is no one in this chamber that grieves more at the taking of life than I do. Murderers and violent offenders belong in prison and should stay there. It is the lack of coordination in the corrections system that has led to the early release and liberal parole programs. Under these programs the life sentence has been distorted to the point that a murderer is out on the street within 5 to 7 years. However, Mr. President, I am convinced that if life imprisonment meant "for life," the penalty of death would find far few supporters.

Let me reiterate that these issues of deterrence, discrimination and corrections are secondary to my deep conviction that the death penalty lies outside the bounds of a government's moral authority. It adds to the further erosion of the sanctity of at a time when we desperately need to reaffirm the value of life.

In conclusion, Mr. President, there is no question that there is a rampant drug problem in America today. Action by the Congress on drug legislation which is both affordable and constitutional can be a critical step toward making progress in our fight against drug use and abuse. The establishment of the death penalty will not solve the drug problem. Drug dealers and traffickers have the vast resources necessary to hire the best lawyers able to work the legal loopholes necessary to avoid the severest of punishment. I strongly object to any amendment to establish a Federal death penalty under the guise of the war on drugs and the preservation of life. It will serve neither purpose.

Thank you Mr. President.

Mr. COHEN. Mr. President, just a few moments ago, I heard the distinguished majority leader indicate that he wants a drug bill this evening, or at

least a bill that is in such form that by Monday at some time we can vote final passage.

I think the subject of capital punishment is an important issue, and it is one that is deserving of eloquence on both sides. Unfortunately, it is 5 minutes to 11, Saturday night, and there are many Members in this Chamber who would like to take a long time to address the issue of capital punishment.

The Senator from Georgia believes that fundamentally it is a strong deterrent. I think there are other Members in the Chamber who feel that it is not a strong deterrent, or at least that there is no evidence that it is a strong deterrent, or who can make arguments that we should not return to the Code of Hammurabi, a code of justice we deem to be something less than enlightened.

It is a debate that should take place, but not at 5 minutes to 11, under the pressure of passing this bill this evening, or coming close to passing it this evening.

Mr. President, I move to table the Mattingly amendment.

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

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

The PRESIDING OFFICER. The motion is not debatable. A motion has been made to table the Mattingly amendment. (Putting the question.)

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MATTINGLY. Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Washington [Mr. GORTON], the Senator from South Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. QUAYLE], the Senator from Utah [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 25, nays 60, as follows:

[Rollcall Vote No. 300 Leg.]

YEAS—25

Andrews	Evans	Metzenbaum
Boschwitz	Glenn	Mitchell
Burdick	Harkin	Pell
Chafee	Hart	Proxmire
Cohen	Hatfield	Sarbanes
Cranston	Inouye	Stennis
Danforth	Mathias	Weicker
Durenberger	Matsunaga	
Eagleton	Melcher	

NAYS—60

Abdnor	Gramm	McConnell
Armstrong	Grassley	Moynihan
Baucus	Hatch	Murkowski
Biden	Hawkins	Nickles
Bingaman	Hecht	Nunn
Bradley	Heflin	Packwood
Broyhill	Heinz	Riegle
Bumpers	Helms	Rockefeller
Byrd	Hollings	Roth
Chiles	Humphrey	Rudman
D'Amato	Johnston	Sasser
DeConcini	Kassebaum	Simpson
Denton	Kasten	Specter
Dixon	Laxalt	Stevens
Dodd	Leahy	Symms
Dole	Levin	Thurmond
Domenici	Long	Trible
Exon	Lugar	Warner
Ford	Mattingly	Wilson
Gore	McClure	Zorinsky

NOT VOTING—15

Bentsen	Gorton	Pryor
Boren	Kennedy	Quayle
Cochran	Kerry	Simon
Garn	Lautenberg	Stafford
Goldwater	Pressler	Wallop

So the motion to lay on the table amendment (No. 3060) was agreed to.

□ 2310

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

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

The motion to lay on the table was agreed to.

Mr. MATTINGLY. Mr. President, I believe that the Senate has very clearly spoken out on the death penalty amendment. I think we have stated that the ultimate judicial sanction, the death penalty, should be available in cases where the drug kingpins involved in continuing criminal enterprises intentionally cause the death of another.

We have indicated that we concur with the decision made in the House when it overwhelmingly approved the Gekas amendment.

Mr. President, as I said, we have had our vote. The Senate has spoken. I will shortly withdraw my amendment.

Before I do, I want to say that I believe the Senate has sent a very strong signal to the Senate conferees that we believe that the Senate should accept the House provision on the death penalty. I hope that we have that assurance.

Mr. President, understanding that the opposition would filibuster and kill this vital bill before they would allow the Senate to work its clear will up or down, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3061

(Purpose: To restore the Federal Pre-Trial Diversion Program)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. DECONCINI], for himself and Mr. LEAHY, proposes an amendment numbered 3061.

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

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

The amendment reads as follows:

In Subtitle B—Drug Possession Penalty Act of 1986.

Sec. 1052—Penalty for Simple Possession: Redesignate (b) as (c) and add the following new (b):

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him

under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The PRESIDING OFFICER. The Senate will be in order. Senators are asked to take their seats.

Mr. DECONCINI. Mr. President, I hope the managers will accept this amendment.

Mr. BIDEN. Mr. President, the minority is happy to accept the amendment. I think it is a good amendment.

Mr. DECONCINI. Mr. President, this amendment reinstates a program that has been part of the judicial system for 16 years. Without hearings on excluding it, it has been taken out. It has worked well that we know of. We have had no objections or criticisms. I think, before we talk about eliminating a positive program in the Justice Department, that we ought to hold hearings.

□ 1120

And I hope the managers of the bill could——

Mr. CHAFEE. Mr. President, we are unable to hear the Senator from Arizona.

The PRESIDING OFFICER. The Senate is out of order.

Mr. CHAFEE. I wonder if he can use the microphone.

The PRESIDING OFFICER. We also ask Senators to take their seats. Those Senators—the Senator will suspend. Those Senators engaged in conversation are asked to retire to the cloakroom. Those Senators who are standing are asked to take their seats. The Senator from Arizona.

Mr. DECONCINI. I thank the Chair.

Mr. President, as I was saying, this amendment before us puts back into the law the way it is right now the program that is termed "pretrial diversion." It is a very important and successful program and has been part of our criminal justice system for 16 years. It has worked well. I did not realize when we put this bipartisan package together that this was taken out. The new fine that is in for the first time of the person who is diverted is in this new amendment. So there would be the $1,000 fine if this program goes into effect.

Mr. President, we have had no hearings. Actually I have had no complaints that this program has ever been misused or abused. It has worked in my State. I started one in my State. It has been most successful. It worked in the State of the Senator from Vermont. The Senator from Vermont is one of the national leaders in this area. So you can spend the time to prosecute and have the police going after the big drug dealers.

I regret that this is even brought up tonight. I think the managers did not intend for it to be part of that. I hope they will accept my amendment that would reinstate the present law with the fine.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, there are serious questions about this amendment on both sides. At any rate, we will accept it, and take it to conference.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3061) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I thank the managers of the bill.

AMENDMENT NO. 3062

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I send an unprinted amendment to the desk in behalf of myself, and Mr. MATTINGLY, Mr. DENTON, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. WILSON, Mr. TRIBLE, and Mr. SYMMS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, and Mr. MATTINGLY, Mr. DENTON, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. WILSON, Mr. TRIBLE, and Mr. SYMMS proposes an amendment numbered 3062.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. 4016: EFFORTS OF THE ENTERTAINMENT INDUSTRY

It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States; whereas this problem is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and the entertainment industry further is encouraged to develop films, television programs, records, and videos which encourage the rejection of illegal drug usage.

The PRESIDING OFFICER. The Senator will suspend until the Senate is in order. The Senate will be in order.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have one additional amendment that I will offer later. But I say to the Senators that when I offer it, I will attempt to explain the requests for additional funds in this bill. Although this bill is authorizing legislation, I do have the funds authorized listed in categories so that the Senate will know what it is doing in defense, what it is doing in transportation, and what it is doing in health and human services et cetera. But that is not this amendment. I will do that when it is my next turn.

This is a very simple amendment. It is a congressional resolution. It expresses the sense of Congress that the entertainment industry should take certain steps to assist us in curbing drug use. It requests the industry to refrain in a voluntary manner from producing films, and TV programs which galmorize drugs. This resolution passed the House. It is acceptable to the manager and the ranking member.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on this amendment?

Mr. WEICKER. Yes, Mr. President. I wonder if we could have the amendment read to us.

Mr. LEAHY. May we have order?

Mr. STENNIS. Mr. President, can we suspend until we have quiet? We need to hear.

Mr. WEICKER. I ask that the amendment be read. I realize it is late at night. But when I hear words like we are going to have a sense-of-the-Senate resolution telling a particular institution within our society what it can or cannot do, we are sort of getting into the free speech area. That is why I want to read this amendment. If the clerk would please read it, I would appreciate that.

Mr. DOMENICI. Mr. President, why not do this? While the Senator reads

it, I ask unanimous consent that my amendment be set aside temporarily and that we proceed to another. We can return to mine after the Senator has had time to read it.

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

AMENDMENT NO. 3063

(Purpose: To add provisions regarding testing, licensing and qualification of operators of commercial motor vehicles)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] proposes an amendment numbered 3063.

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

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

The amendment is as follows:

TITLE—COMMERCIAL MOTOR VEHICLE SAFETY

SHORT TITLE

SEC. —01. This title may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

PURPOSE

SEC. —02. The purpose of this title is to enhance the safe operation of commercial motor vehicles on the Nation's highways by developing national uniform standards for the testing, licensing, and qualification of commercial motor vehicle operators, and by increasing inspections of commercial motor vehicle operators and the equipment they operate.

DEFINITIONS

SEC. —03. As used in this title, the term—

(1) "commerce" means—

(A) trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside of the United States); or

(B) trade, traffic, or transportation in the United States which affects any trade, traffic, or transportation described in subparagraph (A);

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property if—

(A) such vehicle has a gross vehicle weight rating of twenty-six thousand and one or more pounds, or such lower weight rating (not less than ten thousand pounds) as the Secretary considers appropriate;

(B) such vehicle is designed to transport more than fifteen passengers, including the driver; or

(C) such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(3) "controlled substance" shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety;

(5) "employer" means any person engaged in a business in commerce who owns or leases a commercial motor vehicle in connection with such business, or assigns employees to operate such vehicle;

(6) "Secretary" means the Secretary of Transportation; and

(7) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or the Commonwealth of the Northern Marianas.

NATIONAL UNIFORM COMMERCIAL MOTOR VEHICLE OPERATORS LICENSE

SEC. —04. (a)(1) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which establish minimum Federal standards for the licensing, testing, qualifications and classification of operators of commercial motor vehicles. Such regulations shall, at a minimum—

(A) prohibit any person who operates a commercial motor vehicle in commerce from possessing more than one license to operate a commercial motor vehicle;

(B) establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(C) require a driving test of each person who operates or will operate a commercial motor vehicle in commerce in the type of vehicle such person operates or will operate, except the Secretary may, by regulation, permit any State to waive such test in the case of any such person who applies for renewal of a license to operate a commercial motor vehicle;

(D) establish minimum scores for passing such tests;

(E) ensure that each person taking such tests is qualified to operate a commercial motor vehicle in commerce under regulations promulgated under this section, regulations contained in subpart E of part 391 of title 49 of the Code of Federal Regulations, and such other Federal Motor Carrier Safety Regulations contained in title 49 of the Code of Federal Regulations as the Secretary considers appropriate;

(F) establish a schedule of offenses and corresponding suspensions, revocations and cancellations for cause of licenses to operate commercial motor vehicles, which shall include requirements for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test or who is found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test, or who has been twice determined to have operated a commercial motor vehicle while under the influence of a controlled substance or who has twice refused to submit to such a test;

(G) establish a system of classification for licensing that provides different minimum Federal testing standards for operation of different classes of commercial motor vehicles; and

(H) provide that each license to operate a commercial motor vehicle shall contain, at a minimum—

(i) the legal name, date of birth (including day, month and year) sex, and a physical description of the person to whom such license is issued;

(ii) other identifying information which the Secretary considers necessary or appropriate;

(iii) the type of commercial motor vehicle which such person is authorized to operate under such license;

(iv) the name of the State which issued such license; and

(v) the dates between which such license is valid.

(2) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which shall be in addition to regulations promulgated under paragraph (1) of this subsection and which shall establish minimum Federal standards for the licensing, testing, qualifications and classification of any person who operates or will operate a commercial motor vehicle carrying a hazardous material (as defined in section 103(2) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802(2)). Such regulations shall—

(A) ensure that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such hazardous material issued by the Secretary under the Hazardous Materials Transportatiopn Act (49 App. U.S.C. 1801 et seq.);

(B) establish minimum Federal standards for, and scores for passing, written tests which ensure that such person is knowledgeable regarding (i) all such regulations, (ii) the basic properties and handling of such hazardous material, and (iii) the appropriate response to emergencies arising out of the transportation of such hazardous material; and

(C) establish minimum Federal standards for driving tests which ensure that such person is knowledgeable regarding the type of vehicle that such person operates or will operate and regarding the safety system of such vehicle.

The Secretary may exempt any such person from any requirement of this title if the material to be transported is a hazardous material listed pursuant to section 306(a) of the Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation, or if the material to be transported is a consumer commodity or limited quantity hazardous material, as defined in section 171.8 of title 49 of the Code of Federal Regulations.

(3)(A) Section 521(b) of title 49, United States Code, is amended—

(i) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(ii) by inserting immediately after paragraph (11) the following:

"(12) The provisions of this subsection shall apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, except that—

"(A) the amount to be assessed under this subsection for any such violation shall not exceed $5,000 for each such violation; and

"(B) the exceptions regarding employees in paragraphs (2) and (6) of this subsection shall not apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, but (i) in the case of paragraph (2) of this subsection, the amount to be assessed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation, and (ii) in the case of paragraph (6) of this subsection, the penalty to be imposed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation or imprisonment for a term not to exceed one year, or both.".

(B) The Secretary shall establish guidelines for civil and criminal penalties to be imposed by the States for a violation of this subsection. Such penalties shall not exceed $5,000 for each such violation, and shall not provide for imprisonment of more than one year.

(b)(1) No person may operate a commercial motor vehicle in commerce unless such person—

(A) complies with all requirements imposed by regulations promulgated under subsection (a) of this section; and

(B) has a blood alcohol content level of less than 0.04 percent while operating a commercial motor vehicle.

(2)(A) Except as provided in subparagraph (B) of this paragraph, paragraph (1) of this subsection shall become applicable with respect to any person who operates or will operate a commercial motor vehicle in commerce on the date on which the State in which such person is domiciled adopts a classified licensing program under subsection (c)(1) of this section or September 1, 1989, whichever is earlier, except that, with respect to a person to whom a license to operate a commercial motor vehicle has been issued on or before such applicable date, who has not been found to have violated a State or local law relating to motor vehicle traffic control (other than a parking violation) in the three-year period ending on such date, and who has not been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle in commerce or has had a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause at any time during such three-year period, paragraph (1) of this subsection shall only take effect on the date after such date on which—

(i) such license is required to be renewed under State law,

(ii) such person is found to have violated such a State or local law, or

(iii) such person is disqualified pursuant to title 49 of the Code of Federal Regulations by the Secretary from operating a commercial motor vehicle in commerce and has had such person's license suspended, revoked or cancelled for cause by a State,

whichever is earliest.

(B) If any such person is not domiciled in a State that has adopted such a classified licensing program, the Secretary may, in accordance with regulations to be prescribed by the Secretary, permit such person to obtain a license to operate a commercial motor vehicle from any State that has adopted such a program.

(c) On or before September 1, 1989, each State shall, at a minimum—

(1) adopt and administer a classified licensing program for the issuance of licenses to operate commercial motor vehicles that includes testing and qualification standards for persons who operate commercial motor vehicles in commerce in accordance with all of the minimum Federal standards established by the Secretary under subsection (a) of this section, which program (A) may include standards for its domiciliaries that are more stringent than the minimum Federal standards established by the Secretary under subsection (a) of this section; and (B) shall provide that such State shall recognize any license issued by another State if such license meets all of the Federal minimum standards established by the Secretary under subsection (a) of this section;

(2) not issue a license to operate a commercial motor vehicle to a person unless such person passes a written test and driving test for the operation of a commercial motor vehicle which complies with such minimum standards and complies with all requirements imposed by regulations promulgated under subsection (a) of this section;

(3) ensure that each classified license to operate a commercial motor vehicle contains the information described in subsection (a)(1)(H) of this section;

(4) until the information system established under section —05 of this title provides a means of rapid communication of the information specified in such section, (A) notify the Secretary, before the issuance of a classified license to operate a commercial motor vehicle, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license; (B) within 30 days after issuance of a classified license to operate a commercial motor vehicle, notify the Secretary of the issuance of such a license; and (C) maintain information regarding and, upon the request of another State, transmit to such State or, upon the request of an employer or prospective employer, transmit at such State's option to such employer or prospective employer, to the extent permitted by law, information regarding (i) any suspension, revocation or cancellation for cause of such a license and any disqualification pursuant to title 49 of the Code of Federal Regulations of the holder of such a classified license from operating a commercial motor vehicle for a period of 60 days or more, (ii) a decision to deny for cause a license to a person applying for such a license, or (iii) the conviction of the holder of such a classified license of any of the offenses specified in section —05(b)(2) of this title;

(5) when the information system established under section —05 of this title allows for the rapid communication of information, comply with the requirements of all regulations within such time periods as the Secretary establishes under section —05(d) of this title, including a requirement that the State shall respond to all requests for information from employers;

(6) before issuance of a classified license to operate a commercial motor vehicle, contact any other State which has issued to such person such a license to determine the driving record of such person and, if the State determines as a result of such contact that such person has been disqualified pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle by the Secretary, or has had a license suspended, revoked or cancelled for cause for violation of an offense pursuant to subsection (a)(1)(F) of this section, within three years before application has been made for such a classified license, not issue such a classified license to such person;

(7) not issue a classified license to operate a commercial motor vehicle to any person to whom such a license has been issued by any other State unless such person first returns such license issued by such other State;

(8) prior to issuing a classified license to operate a commercial motor vehicle to any person, consult the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401, note) (after such Register is determined by the Secretary to be operational) to determine whether such person has either been disqualified from operating a motor vehicle other than a commercial motor vehicle, or has had a license other than a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause, within three years before application has been made for such a classified license, or has been convicted of any of the offenses specified in section 205(a) of the National Driver Register Act of 1982 and, if the State is informed that such person has been so disqualified or convicted or such license has been suspended, revoked or cancelled for cause, not issue a classified license to operate a commercial motor vehicle to such person;

(9) impose such penalties for a violation of subsection (a) of this section as the State determines appropriate, if such penalties are the same as or more stringent than the guidelines established by the Secretary in subsection (b)(3)(B) of this section; and

(10) suspend, revoke or cancel, in accordance with subsection (a)(1)(F) of this section, a license to operate a commercial motor vehicle.

(d)(1) The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to comply with all provisions of subsection (c) of this section.

(2) The amount of a grant under this subsection to any State shall not be less than $100,000 in any fiscal year.

(3) The Secretary may not make a grant to any State under this subsection unless such State agrees that the aggregate expenditures of funds of the State, exclusive of Federal funds, for testing and licensing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of enactment of this Act.

(4) A State which received a grant under this subsection may use the funds provided under such grant only for testing and licensing of operators of commercial motor vehicles.

(5) A grant made under this subsection shall be for a period of 1 year.

(6) Funds made available to carry out this subsection shall remain available for obligation by the Secretary for the fiscal year in which such funds are made available and the three fiscal years after such fiscal year.

(7) There shall be available to the Secretary to carry out this subsection—

(A) $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for each of fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) after deducting the amount permitted under section 402(c) of title 23, United States Code, $3,000,000 from funds made

available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e)(1) The Secretary shall withhold highway funds from any State that is not in compliance with this section after September 30, 1992.

(2) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(3) The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second fiscal year beginning after September 30, 1992, and the first day of each fiscal year thereafter, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(4)(A) The Secretary shall withhold 2 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(B) The Secretary shall withhold not less than 2 percent nor more than 5 percent, as the Secretary determines to be appropriate, of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second through fifth fiscal years beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(C) The Secretary shall withhold not less than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the sixth fiscal year, and each fiscal year thereafter, beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(5)(A) Any funds withheld under this subsection from apportionment to any State after September 30, 1992, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) If, before the last day of the period for which funds withheld under this subsection from apportionment are to remain available for apportionment to a State under subsparagraph (A) of this paragraph, the State complies with the provisions of this section, the Secretary shall, on the day following the date on which such State complies, apportion to such State the withheld funds remaining available for apportionment to such State.

(C) Any funds apportioned pursuant to subparagraph (B) of this paragraph shall remain available for expenditure as follows:

(i) Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, shall remain available until the fiscal year succeeding the fiscal year in which such funds are so apportioned.

(ii) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of title 23, United Staes Code, shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse.

(D) If, at the end of the period for which funds withheld under this subsection from apportionment are available for apportionment to a State under subparagraph (A) of this paragraph, the State has not complied with the provisions of this section, such funds shall lapse.

COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM

SEC. —05. (a) Not later than January 1, 1989, the Secretary, after consultation with the States, shall cause to be in operation an information system pertaining to the driving status and licensing of operators of commercial motor vehicles. The information system shall serve as a clearinghouse by which the States may communicate rapidly concerning the licensing, identification and driving records of operators of commercial motor vehicles.

(b) The information system established under this section shall—

(1) provide for a depository of information that will, at a minimum, include (with respect to each operator of a commercial vehicle)—

(A) the birth date and physical description of such operator, and any other information which the Secretary considers necessary or appropriate to identify specifically such operator;

(B) the address of such operator; and

(C) all States in which such operator currently has a license to operate a commercial motor vehicle; and

(2) provide a system of communication among States that, at a minimum, shall provide exchange of information specified in paragraph (1) of this subsection and information regarding whether such operator has been denied a license to operate a commercial motor vehicle, has been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle, has had a license suspended, revoked or cancelled for cause, or has been convicted under the laws of any State for (A) operating a commercial motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (B) violating a traffic rule or ordinance arising in connection with a fatal traffic accident, reckless driving, or racing on the highways and involving a commercial motor vehicle; (C) failing to render aid or provide indentification when involved in an accident involving a commercial motor vehicle which resulted in a fatality or personal injury; or (D) committing perjury or knowingly making a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a commercial motor vehicle.

(c)(1) Upon request of a State, the Secretary or a State, as appropriate, shall make available to the requesting State information in the information system established under this section. Upon request of an employer or prospective employer of an employee, the Secretary or a State, as appropriate, shall, to the extent otherwise permitted by law, make available to such employer or prospective employer information in such system relating to such employee.

(2) Any prospective employer of a person as an operator of a commercial motor vehicle shall consult the information system established under this section to determine, prior to employing such person, whether a license to operate a commercial motor vehicle issued to such person has been suspended, revoked or cancelled for cause. If such prospective employer determines, as a result of such consultation, that such person's license has been suspended, revoked or cancelled for cause, the prospective employer shall not employ such person as an operator of a commercial motor vehicle.

(d) When the information system required by this section has become available, the Secretary shall issue regulations establishing appropriate time periods for transmission of informaton, as provided in section —04(c) (4) and (5) of this title.

(e) The Secretary shall establish and the Secretary or a State, as appropriate, shall collect fees for utilization of the information system established under this section. The amount of fees collected by the Secretary or a State under this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected by the Secretary under this subsection in the general fund of the Treasury.

(f) There shall be available for fiscal year 1987 to the Secretary for purposes of establishing the information system under this section not to exceed $2,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304). Such sums shall remain available until expended.

FREQUENT INSPECTIONS

SEC. —06. (a) Section 402(b)(1) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period in subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(H) with respect to any fiscal year beginning with fiscal year 1989, provides for the adoption and implementation of an effective program to conduct inspections of commercial motor vehicles, which program shall provide—

"(i) that commercial motor vehicles are inspected frequently (as determined by the Secretary), and that such inspections are conducted at roadside;

"(ii) for the administration of observations or tests, or both, to determine the

blood alcohol content level of the operator of a commercial motor vehicle; and

"(iii) for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined, as a result of an observation or test administered under clause (ii) of this subparagraph, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined, as a result of such an observation or test, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test.".

(b) Section 402(b) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)) is amended by adding at the end thereof the following:

"(3)(A) As part of a grant made under this subsection, the Secretary may also provide funds to encourage the States to adopt and implement programs providing for the administration of tests to determine whether the operator of a commercial motor vehicle is under the influence of a controlled substance while operating such motor vehicle.

"(B) For purposes of this subsection, the term 'controlled substance' shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6)).".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. —07. (a) Section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) is amended—

(1) by striking "$40,000,000" and inserting in lieu thereof "$50,000,000";

(2) by striking "and" after "1987,";

(3) by striking "$50,000,000" and inserting in lieu thereof "$60,000,000"; and

(4) by striking out "1988'." and inserting in lieu thereof "1988; not to exceed $70,000,000 in the fiscal year ending September 30, 1989; and not to exceed $80,000,000 in the fiscal year ending September 30, 1990.".

(b) Any activity of the Secretary under this title shall only be undertaken to the extent that appropriations have been made available in advance for such activity.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

The Senate will be in order. It is becoming increasingly difficult to hear or to be heard at this late hour. The Senators are respectfully requested to return to the Cloakroom to carry on their conversations. The Senators standing are urged to take their seats.

The Senator from Missouri [Mr. DANFORTH].

Mr. DANFORTH. Mr. President, I believe this is a noncontroversial amendment. I have discussed it with the managers on both sides. I am told they will accept it.

This amendment was part of the Republican portion of the drug package that was put together. It is the Commercial Motor Vehicle Safety Act of 1986. It is a noncontroversial piece of legislation. We had hearings on it in the Commerce Committee. It was unanimously reported out of the Commerce Committee. It does not have aspects to it which are beyond the drug issues, strictly speaking, but it also touches very plainly on the drug question.

The bill provides for increased random motor vehicle equipment inspections which would include along with inspecting the equipment at truck stops, the opportunity to observe the behavior of drivers and possibly test them for alcohol abuse, and observe the possibility of drug use.

The PRESIDING OFFICER. The Senator will suspend.

Those Republican staffers that are standing and talking are directed to leave the Chamber now. The Sergeant at Arms is directed to carry out that order. Senators have a right to be heard. Senators cannot be heard.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. BIDEN. Mr. President, we are willing to accept the amendment.

Mr. DANFORTH. I would be happy to explain.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. SPECTER. Mr. President, I send an amendment to the desk.

Mr. LEAHY addressed the Chair.

Mr. DANFORTH. Mr. President, have we had a vote?

The PRESIDING OFFICER. No; the issue before us is the Danforth amendment. Is there further debate on the Danforth amendment?

AMENDMENT NO. 3064

Mr. SPECTER. Mr. President, I send to the desk an amendment in the second degree to the Danforth amendment and asked for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 3064.

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

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

The amendment is as follows:

STUDY BY THE DEPARTMENT OF TRANSPORTATION

SEC. . The Secretary of Transportation shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirement of section —04(a)(1)(F) regarding blood alcohol content level impacts on operators of commerical motor vehicles who are required by their employers to be available to operate such commerical motor vehicles on short notice.

Mr. SPECTER. Mr. President, this is a noncontroversial amendment which has been cleared with the distinguished Senator from Missouri, and provides for a congressional study committee regarding the alcohol blood content level.

Mr. DANFORTH. Mr. President, this amendment is acceptable.

The PRESIDING OFFICER. Is there further debate on the amendment in the second degree?

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. BIDEN. We are willing to accept the amendment, as amended.

Mr. SPECTER. I understand this is important legislation. There is one particular aspect of it on which I want to comment and my amendment addresses that subject. That subject is the "call back" to which some commercial drivers are subject. Under the call back provision of some labor agreements certain drivers are required to report to work on short notice. If one of these drivers has been drinking prior to the call to work he may face a difficult choice. The choice is whether to disclose that he is possibly in violation of this legislation's requirement that a commercial driver not have 0.04 blood alcohol content or more or to accept the call. The driver could be concerned that the former might lead to discipline while the latter might require violating the standard. My amendment would require the Secretary of Transportation to study this issue and report to Congress no later than October 1, 1988.

Mr. DANFORTH. I thank the Senator from Pennsylvania for his comments and I accept his amendment. The issue of call back was raised during hearings I conducted on truck safety and I believe it is worthy of further study. I want to point out that the 0.04 blood alcohol standard is an important part of this legislation. It is the standard that is used in the railroad industry for train crews and it is also the standard that is used in the airline industry for both pilots and flight attendants. I think it is important that transportation professionals in the truck and bus industries be held to this standard.

THE "COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986"

Mr. DANFORTH. Mr. President, I urge all my colleagues to support an amendment adding the "Commercial Motor Vehicle Safety Act of 1986," to the by-partisan Senate drug bill. This amendment will save lives by removing unsafe commercial drivers from our highways, particularly those who use drugs or alcohol.

Last December, I introduced the Commercial Motor Vehicle Safety Act of 1985 (S. 1903), on behalf of myself and Senator PACKWOOD, to address a number of critical motor carrier safety issues. The Commerce Committee held a hearing on the bill in July and on August 7 ordered it reported favorably with an amendment in the nature of a substitute. My amendment is identical

to the committee reported version of S. 1903 except for two changes. The first change provides for the immediate suspension of the license of a commercial driver who operates a vehicle under the influence of drugs. The second change provides the States additional time to comply with the legislation.

Motor carrier safety has long been a substantial problem in the United States, and the problem appears to be worsening. In 1983, 31,000 interstate truck accidents were reported to the Department of Transportation [DOT]. In 1984, interstate truck accidents increased by 18 percent to 37,000 and in 1985, they jumped another 6 percent to over 39,000, and in 1985, they jumped another 6 percent to over 39,000. Those 39,000 accidents resulted in almost 2,700 fatalities and 29,000 injuries. Intrastate truck accidents claim another 2,000 lives each year. Bus safety is also a problem. Reported intercity bus accidents have increased by over 300 percent in the last 2 years.

Let me give you some examples of the human tragedy that is behind these numbers. In August, a truck driver allegedly shot country singer Ricky Skaggs' 7-year-old son because he thought the boy's mother had cut too closely in front of his truck. Press reports indicate the driver had drugs including cocaine, amphetamines, and marijuana in his truck. In May, a bus crashed in Walker, CA, killing 20 elderly people and injuring 21 more. The driver of that bus reportedly had been fired from another bus company after being arrested for driving with a suspended license, had eight speeding tickets for driving buses in excess of 70 mph, and had three accidents that were never reported to the police.

In Commerce Committee hearings we have identified a number of areas of motor carrier safety that must be improved if we are to prevent such tragedies. First, we must stop the serious drug problem in the trucking industry. The Skaggs case was not an isolated example of drug use by a truck driver. During our hearings, it has been reported that with the assistance of the CB radio drugs are sold openly at most truck stops. The State of Tennessee has arrested and prosecuted almost 700 truck drivers for drug possession in the last 18 months. Drug use by truck drivers is not a "victimless" crime. It contributes to the annual toll of 5,000 deaths from truck and bus accidents.

Second, we must ensure that all commercial drivers are qualified to do the demanding work of operating a truck or bus. Today, 20 States will issue a license entitling any individual who merely passes a regular motorist test in a compact car to drive a tractor-trailer truck nationwide. In fact, only 12 States require a license applicant to take a driving test in the type of truck or bus he or she is to be licensed to operate.

It is especially important to establish standards for drivers transporting hazardous materials. On July 8, 1986, the Office of Technology Assessment [OTA] released a study requested by the Commerce Committee on hazardous materials transportation, which included the finding that human factors, rather than equipment shortcomings, cause 62 percent of reported vehicle accidents and hazardous materials spills. Noting the importance of an adequately prepared driver as an accident prevention tool, the OTA study recommended the creation of a national motor carrier driver's license, with special certification requirements for hazardous materials drivers. Current DOT requirements include a written test of 66 questions, which a driver does not need to pass and which has only eight questions pertaining to hazardous materials transportation. Only California and Michigan require additional special qualifications for hazardous materials drivers. The Commerce Committee concurs with OTA's assessment that the protection of both drivers and the public requires that more be done to ensure that drivers of hazardous materials are adequately prepared to transport safely such materials and to respond appropriately in the event of an accident.

Third, the practice of multiple license use by commercial drivers must be stopped. In 1962, the States developed the Drivers License Compact, which is a voluntary cooperative effort whose major objectives are the development of a one-license/one-record concept. These voluntary efforts have failed miserably. A 1981 National Highway Traffic Safety Administration [NHTSA] study found, for example, that over 32 percent of South Carolina's, over 29 percent of Alabama's, and almost 22 percent of California's interstate truck drivers had more than one license. Commercial drivers shuffle multiple licenses like a deck of cards. They use them to spread their traffic violations over a number of licenses, and maintain a "good driver" rating regardless of the number of violations.

Fourth, it is important to establish Federal standards that curb alcohol abuse by commercial drivers. On February 18, 1986, I chaired Commerce Committee hearings that identified alcohol abuse as a serious problem in all the transportation industries. Employees in the railroad and airline industries are prohibited from operating these forms of transportation while having 0.04 percent or more blood alcohol content [BAC]. Setting 0.04 as the standard for the suspension or revocation of commercial drivers' licenses is one method of controlling alcohol abuse in the motor carrier industry.

Fifth, we need to expand the Motor Carrier Safety Assistance Program [MCSAP]. At present, the MCSAP provides grants to states for inspections of truck and bus equipment. These efforts are long overdue. For example, in the first 5 months of this year a Maryland inspection team funded by a MCSAP grant inspected 17,800 vehicles. Maryland found that over 5,000 of these vehicles had unsafe brakes. Others had inadequate lighting. Others had defective steering, coupling devices and tires. Almost 13,000 of these vehicles, or over 72 percent of those inspected, were in such bad shape that they were immediately put out of service.

We have made some success, but this is only the tip of the iceberg. Although 49 jurisdictions are using these grants, many of the unsafe trucks and buses will go undetected unless we have more inspectors. The drivers simply pull off the side of the road and wait for the inspection station to close down or take an alternate route with no inspectors.

My amendment would improve motor carrier safety in each of these critical areas. First, it provides for increased motor carrier equipment inspections and commercial driver drug and alcohol checks through MCSAP.

Second, it would direct DOT to establish Federal minimum standards for licensing, testing, qualification, and classification of commercial drivers. These standards would: First, prohibit commercial drivers from possessing more than one commercial license; second, require that commercial drivers pass meaningful written and driving tests; third, provide special qualifications for hazardous materials drivers; and fourth, provide that a commercial driver found to have a .04-percent or more BAC would receive a 1-year license suspension for the first offense and permanent license revocation for the second offense.

Third, the amendment directs the States to issue and administer licenses consistent with DOT standards. A total of $8 million would be authorized during each of fiscal years 1987 through 1991 to assist the States in complying with Federal licensing standards. States that do not comply with the Federal licensing standards would be subject to having portions of their highway funding withheld.

Fourth, DOT is directed to ensure that a commercial drivers license information system is established so that the States could determine if a license applicant had another license, and transmit and receive driver record information to stop unsafe drivers from operating commercial vehicles. There would be $2 million authorized for the start up of this system, and user fees would cover the costs of its operation.

Fifth, the amendment would increase and extend funding authorizations for MCSAP. Currently, the program has years 1987 and 1988 would increase to $50 and $60 million, respectively. There would be new authorizations for fiscal years 1989 and 1990 of $70 and $80 million, respectively.

The time for this legislation is now. Most commercial drivers are qualified, safe professionals who operate safe equipment. We need this legislation, however, to ensure that all commercial drivers have the skills needed to operate trucks that weigh an average of 60,000 to 80,000 pounds and buses that carry dozens of people. We need to stop those drivers who flaunt the law with a wallet full of licenses and who drink or use drugs while operating a truck or bus. We need it to get the unsafe equipment with faulty brakes and faulty steering off the road.

Mr. President, I urge all my colleagues to support this amendment for improving highway safety and fighting drug abuse.

The PRESIDING OFFICER. Is there further debate on the amendment now before us in the second degree?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, might I inquire of the Chair what the amendment is before us?

The PRESIDING OFFICER. Will the Senator restate the question?

Mr. HARKIN. Parliamentary inquiry, Mr. President: Can the Chair tell us what the second-degree amendment is?

□ 2330

The PRESIDING OFFICER. The clerk will read the amendment.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 3064.

At the end of the amendment, add the following:

STUDY BY THE DEPARTMENT OF TRANSPORTATION

SEC. . The Secretary of Transportation shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirement of section —04(a)(1)(F) regarding blood alcohol content level impacts on operators of commercial motor vehicles who are required by their employers to be available to operate such commercial motor vehicles on short notice.

The PRESIDING OFFICER. Is there further debate on the amendment to the amendment? If not, the question is on agreeing to the amendment to the amendment.

The amendment (No. 3064) to amendment No. 3063 was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the amendment, as amended.

The amendment (No. 3063), as amended, was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3062

The PRESIDING OFFICER. The question recurs on the Domenici amendment which was previously temporarily laid aside by unanimous consent.

Mr. DOMENICI. Mr. President, I understand that the distinguished Senator from Connecticut wants to discuss this amendment. I would be pleased to do that. I will just take a couple of minutes. I have no intention of delaying the Senate.

I want to first say that the U.S. House of Representatives adopted this amendment when it was offered on the floor. I will read it rather than debate it. The amendment reads as follows:

It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States; whereas this problem is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and the entertainment industry further is encouraged to develop films, television programs, records, and videos which encourage the rejection of illegal drug usage.

Nothing is intended to be binding on the production of films and programs. We are merely encouraging the industry to do voluntarily what they can to produce for general consumption programs and films that do not glamorize drugs and illicit drug activities.

I believe it is something we ought to speak out on. It is simple in nature. It is binding on no one, but it indicates the true sense of the Congress, that we are concerned that much of the attitudes of our people come from what they see on television, in films, and other mass media. It urges that they deglamorize drugs. Nothing more, nothing less.

I understand that the Senator wonders what glamorizing is. I think the industry knows. But if they do not know, we are not binding them with any objective rules. Just if they can, if they would, "Please, to the best of your ability, industry, do not glamorize drugs."

That is the essence of my sense-of-the-Congress resolution.

I say to the Senator from Connecticut, if he desires that we stay here a while on this one, we will, and if he wants a vote we will stay here a while and we will have a rollcall vote.

Mr. MATTINGLY. Mr. President, this amendment simply urges the media and the entertainment industry to participate more actively our national war on drugs.

The President has identified the drug problem as one deserving national attention and requiring a national effort to overcome it. He has called the dissemination of accurate and credible information about the effects of illegal drug use a national priority.

In this endeavor, the national broadcast media, with access to almost every home in America, are a unique resource. They are, in fact, one which should be utilized to the greatest extent possible. If this is to occur, however, decisionmakers with the industry itself must make a firm commitment to help win the fight. Local broadcasters have made important contributions through the airing of public service announcements. My wife and I have recorded PSA's as I know many of my colleagues have. I appreciate this participation by broadcasters and believe it has benefited the public. But this is not enough. As the problem has grown, I believe that greater involvement, on a national scale, is required. We need more public service announcements, shown during prime time. And we need much more than PSA's. Prime time programming should address the issue, giving an accurate picture of the dire consequences of drug use through drama and documentary.

We all recognize the fact that young people are seriously influenced by what they see and hear. Often, the characters they watch become role models to emulate. For this reason, we should urge that programmers refrain from including positive glamorous references to illegal drug use from programming. It is only fair to acknowledge that some in the television industry have been responsive to similar requests in the past.

The motion picture and recording industries, on the other hand, have not been as cooperative. In fact, through the widespread depiction and glamorization of drug use, they can be said to have negatively influenced and often misled our youth about the realities of drug use. The amendment simply urges these industries to respond to the President's challenge and the public's concern by refraining from including these references from their productions. In other words, this calls

upon the industries to act with the welfare of the Nation foremost in mind.

I sincerely hope, Mr. President, that these industries will understand the vital role they can play in helping protect our young people from the tragedy of drug abuse—and that those who have the ability to reach the public with the truth about drugs are accountable. It is my hope that with the urging of this body, the entertainment industry will utilize their resources for the common good. I hope as well that my colleagues will join in sending a strong message to these industries that our Nation needs their assistance in confronting and defeating a real, present, and dangerous enemy.

Mr. WEICKER. Mr. President, I wonder if I might have a copy of the amendment. It is the only copy floating around.

I thank my distinguished colleague from New Mexico for the copy.

Mr. President, there are real problems with this. There are certainly no problems with the whereas clauses.

It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States—

We all agree.

Whereas this problem is particularly prevalent among and harmful to the Nation's young people—

We all agree to that.

Whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country—

Now we are starting to enter the gray area.

The entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs.

How about the written media? How about broadcasting?

Tell me, who is going to define "which in any way glamorizes or encourages the use of illegal drugs"? Certainly, there are enough lawyers present in this body to realize there is not very much precision in that phrase. That could very well be used against anyone, in any form of communication.

That is exactly what this bill was not meant to be. Nobody is going to disagree with the problems that confront us. If we are going to save the entertainment industry, then somebody, I am sure, will have a similar amendment to apply to the written media, the press. We will have it apply to those engaged in the electronic media, and so on down the line.

In many way glamorizes or encourages.

Define it for me.

Then I am told, and the distinguished Senator from New Mexico has every right to refute this, I am told in my discussion with the Senator from New Mexico that that means in their definition, because they can define it for themselves.

So what is the point of having the resolution then?

This is exactly the type of danger that comes along under the guise of drugs, to start encroaching on the matter of free speech.

Nobody denies the problem, but this is the first step toward encroaching on the Constitution.

I do not intend to go ahead and in any way have an extended debate on this matter. I would suggest you read the amendment. I think I have made the words plain as to what it encompasses. I would hope it would get voted down.

I suggest to you that the problem that is raised is the most serious problem in a bill of this sort. Politics and panic take over and the Constitution takes a hind seat.

Can anyone of you in this room define for me the term "in any way glamorize or encourages the use of illegal drugs"?

Even factual reporting: even a factual film? You could apply that standard.

I do not care what they do in the House of Representatives. That is their business. That is not the basis for adopting an amendment over here. This is the great deliberative body. It is exactly this type of thing that is supposed to come under our careful scrutiny.

I would hope that this amendment is not adopted because of the dangers it represents.

We are not trying to moralize for anybody in this bill. What we are trying to do is to address a specific problem—the drug problem. If we are going to address it, we are going to address it by education, by rehabilitation, and by scientific research.

I have seen this brave body perfectly willing to go ahead and vote an amendment to throw the switch on someone and yet nobody yet is standing up here who has the courage to say, "Let us pay for the bill, let us pay for the education, for the scientific research, and for the rehabilitation."

This amendment is just one more easy solution to the drug problem. Let us go ahead and point the finger "at the entertainment industry which in any way glamorizes or encourages the use of illegal drugs."

If there is one thing that this body is, it is the last protection of the Constitution of the United States.

This ought to stand out like a red flag in the eyes of every person on this floor. I hope the amendment is defeated.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I want to say I think we are infringing on the free speech of no one. I think, as a matter of fact, by the adoption of the resolution the U.S. Senate is engaging in its free speech, nothing more, and nothing less.

If we do not think television and movies can deglamorize drugs in the United States, then vote no on this.

If they think they can, then give them a little encouragement. That is all.

There is no standard, absolutely none. If they would just sit around some board meetings and look at their product and say, "Hey, maybe this ought to be stopped; it is a little bit too much of a glorification of drugs," that is all we are asking of them.

They can debate it and say, "No, it has a nice moral overtone. It ends up right." Nobody is talking about that.

I submit if we cannot in the so-called war on drugs bill encourage the industry of the United States that molds the minds of our young people, just encourage them, voluntarily to deglorify drugs, then we have declared peace. There is no war. We will have decided that we do not want to do anything about it, even something as simple as exercising our prerogative to have a collective opinion that we urge on them voluntarily.

□ 2340

The PRESIDING OFFICER. Is there further debate?

Mr. THURMOND addressed the Chair.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I think it is time now for me to speak on this drug issue. I was prepared to speak on the last amendment. I am going to talk about this one now because I agree with the Senator from Connecticut that we have reached the point of approaching this problem with somewhat of a tinge of absurdity.

I applaud the interest the other body has shown in this problem. Two weeks ago, the House passed a bill to provide $2 billion for antidrug activities next year, more than $4 billion over the next 3 years. In the Senate we now have an amendment talking about the entertainment industry not glamorizing and encouraging the use of illegal drugs. There is one drug that is being glamorized more than any other drug in this country and no one is even talking about it. I think it is time we talked about it and who is glamorizing it.

It is the most widely used drug in America. It also contributes to other drug abuse. It is the most lethal, deadly drug in our society and kills more people than any illegal drug, imported or domestic, in this society. No

one is talking about it. But you know what I am talking about. I am talking about alcohol. If we want to get serious about winning the war rather than just winning an election, let us not kid ourselves as to the nature of the enemy.

Look at the figures. According to the National Institute on Drug Abuse, among 1985 high school seniors, one-time use of marijuana is down. So is the use of inhalants, hallucinogens, stimulants, sedatives, barbiturates, and cigarettes. Several categories have held steady, including amyl and butyl nitrates, LSD, PCP, heroin, opiates other than heroin, and tranquilizers. They are all either holding steady or going down. But what is going up in use among the youths of our country? Alcohol. It goes up every day, every week, every month. Now we want to have a sense-of-the-Senate resolution asking entertainers to deglamorize illicit drugs.

Now we say we are going to deglamorize drugs while at the same time, the most deadly drug in our society is glamorized every day, a legal drug, alcohol.

In all the hoopla over drug abuse, alcohol is left out. And it is ironic, because alcohol should be the biggest target we aim for. There are 18.3 million adult heavy drinkers in America, at an economic cost to this country of more than $116.7 billion per year. That's what we paid in 1983 to take care of and rehabilitate our alcoholics. We paid for their early mortality and made amends for their reduced productivity and the crimes they committed. The economic cost to this country of alcohol abuse is double that of illicit drug abuse.

And the social cost to this country is astonishing. Just like heroin and cocaine, alcohol is a dependence-forming psychoactive drug. Alcoholism is a chronic, progressive and potentially fatal disease. Unlike heroin and cocaine, alcohol killed 98,188 people in 1980. They died from cirrhosis, other medical consequences, alcohol-related motor vehicle accidents, alcohol-related homicides, suicides, and nonmotor vehicle accidents.

Fifty-four percent of jail inmates convicted of violent crimes were drinking before they committed the offense. Sixty-two percent of those convicted of assault had been drinking and 49 percent of those convicted of murder or attempted murder had been drinking.

Talk about a threat to society; alcohol was involved in 50 percent of all car accidents last year. Fifty percent. In 1984, there were 44,241 highway deaths of which 23,500 or 53 percent were alcohol-related. In Iowa, total of 234 persons died in 202 alcohol-related fatal crashes—an increase from 1984 when 201 people were killed. Of the 234 killed, 159 were the drunken drivers; 74 were their innocent victims. Mr. President, according to the U.S. Department of Transportation, 65 out of every 100 persons in the United States will be in an alcohol-related crash in their lifetimes.

Between 400 and 800 boating fatalities annually involve alcohol, and alcohol is implicated in from 65 to 69 percent of all reported drownings. In nonhighway settings, alcohol is a contributing factor in at least 15,000 fatal and 6 million nonfatal injuries.

Chronic brain injury caused by alcohol is second only to Alzheimer's disease as a known cause of mental deterioration in adults. Drinking during pregnancy, linked to infant mortality and low birth weight, is the third leading cause of birth defects with accompanying mental retardation.

One out of every three American adults—56 million Americans—says that alcohol abuse has brought trouble to their family. Drinking is estimated to be involved in about 50 percent of spouse abuse cases and up to 38 percent of child abuse cases. Perhaps most tragic, Mr. President, is that the children of alcoholics have a four times greater risk of developing alcoholism than children of nonalcoholics.

What does this have to do with this amendment? What about the nonadult drinkers? Alcohol is America's No. 1 drug problem among youth. Alcohol is twice as popular among college students as the next leading drug, marijuana, and over five times as popular as cocaine.

I ask the Senators to take a look at this chart if they do not think alcohol is a problem in this country. Here is the prevalance of use among high school students last year. The top of the graph shows if they have ever used the drug at all. Ninety-two percent of high school students have used alcohol, 62 percent in the last month. Fifty-four percent have used marijuana, cocaine 17 percent, heroin 1 percent.

That is the drug problem in America right there. Alcohol. But nobody wants to talk about it. We want to talk about cocaine and PCP and crack. I do not see why everybody gets so excited about crack when a six-pack is right around the corner the kids can go and get.

Approximately 10,000 young people aged 16 to 24 are killed each year in alcohol-related accidents of all kinds, including drownings, suicides, violent injuries, homicides, and injuries from fire. And alcohol-related highway deaths are the No. 2 killer of 15- to 24-year-olds. Drivers 16 to 24 years old represent 20 percent of licensed drivers and less than 20 percent of total miles driven, yet, these drivers account for 42 percent of all fatal alcohol-related crashes.

Both the director of the National Institute on Drug Abuse, Dr. Charles Schuster, and Director of the White House Drug Abuse Policy Office, Dr. Carlton Turner, agree that the No. 1 drug threat in America today is alcohol. In my home State of Iowa, 80 percent of drug abuse is attributed to alcohol. A Drug program that ignores or underplays the peril of alcohol abuse is bound to miss the mark. What good does it do to spend vast amounts of time and money warning youngsters about crack and pot and PCP and heroin when all they have to do is go around the corner and buy a six-pack or a fifth or a pint or a quart.

Mr. BOSCHWITZ. Will the Senator from Iowa yield for a question?

Mr. HARKIN. No, Mr. President, not right now. I want to finish my statement. Then I shall yield.

□ 2350

I feel bad about taking the time of the Senate this evening to talk about this, but no one has talked about this subject of alcohol and I think it ought to be talked about. We permit alcohol to get off scot free. I guess the reason is that it is too close to where we live, the corner pub, the Superbowl, the New Year's Eve party, the 19th hole.

If we really believe that new and draconian laws are going to stop drug abuse, maybe we should reconsider our permissive laws governing alcohol. You want to talk about having the entertainment industry produce films and television programs to encourage rejection of illegal drug abuse, just listen to this figure. A child will see alcohol consumed an average of 75,000 times on TV before he or she finishes high school—75,000 times a child will see alcohol consumed on television before they finish high school. Adolescents and young adults are more heavily exposed to alcohol ads on TV and magazines and they are more likely to perceive drinking attractive, acceptable and rewarding than those who have been less heavily exposed.

Now, I am not saying that we ought to become a bunch of Carry Nations. I do not think we ought to go in and bust up the bars, I do not want to bring back prohibition; but if we are going to talk about deglamorizing drugs, if we are going to talk about deglamorizing crack, pot, heroin, PCP, as we should, let us talk about deglamorizing alcohol.

Now, the distinguished Senator from New Mexico wants us to have the entertainment industry provide films, television programs, records, and videos to encourage rejection of illegal drug use.

Mr. President, let us just take a look at a series of recent magazines to show the hypocrisy of what we are talking about. Here is Time magazine's cover story, July 28. "The Army Joins the

Drug War." You open it up and there is a nice big bottle of Scotch in the sand, right on the beach for you. Let us crack down on drugs but let us go ahead and drink. Here is one, the cover magazine of Time, "Drugs on the Job," March 17, 1986. And you open it up and what do you see? First big ad here for cognac: "Hennessey, the civilized way to catch someone's eye." There are people on an airplane; they are taking a flight and everybody is out of it except the two people who are drinking. Talk about glamorizing alcohol.

Here is the cover story, "Drugs on the Job," and here are people flying an airplane and the two people who are with it are drinking.

Oh, here is another ad, same magazine, same cover story, "Drugs on the Job." The ad says, "The Spirit of America." What is the spirit of America? Not hard work, not thrift, not saving. It is having a shot of bourbon at night before you go to bed. That is what is says. That is the spirit of America. That is what it says right here. It says, "Somewhere west of Laramie, men still ride from dawn to dusk and settle down to a shot of bourbon against the chill of night."

And then here is the last page. Here is an imported beer from Denmark. It is "the greatest export since the Vikings," they say. Here is another magazine story Newsweek, March 17, 1986, "Kids and Cocaine," cover story. You open it up: "Be a part of it," it says, two young people being a part of it, drinking a little whiskey. "Be a part of it," it says. Glamorizing alcohol for our young people.

Here is another one, Time magazine, June 2, "Crack's Deadly Threat," and you open it up. What do you have here? Oh, right on the inside cover, "Here is to more gin taste."

You open it up and there is another ad in here—there are a lot of ads in this one. There is another ad in here for—oh, yes, "Be a part of it," again, two young people. "Be a part of it, Canadian Club." In other words, drink whiskey and you're "with it," otherwise you're not a part of being "with it."

Well, I hope my point is made. We talk about deglamorizing drugs and yet the most widely used drug is not only legal but glamorized all over America. And you know as well as I do that before you smoke pot, before you take PCP, before you shoot up with heroin, before you sniff the coke, you have been drinking. The data shows it. Before they do that, they are out drinking whiskey or gin or beer.

Now, again, I want to make it clear, I do not believe in prohibition. We should not burn down the bars and close them up. But I do believe if we are going to talk about drug abuse, let us talk about the No. 1 drug problem in America, the one that kills young people, the one that breaks up homes, the one that costs us more money than all of the illegal drugs put together in our society. And yet nobody—I have listened in vain, but no one has come forth in all of this debate about cracking down on drugs and pointed out the glamorizing of alcohol. Perhaps, if those fancy ads were not tax deductible, they would think twice about putting it in a magazine.

Now, again, I am not saying I want to restrict anyone's first amendment rights. I am just saying here we are, giving tax deductions to people who want to advertise alcohol. Tax deductions, And we turn right around and spend $116 billion a year to take care of the problem caused by alcohol in this country.

Well, I am opposed to the amendment just offered, but if the amendment is going to make any sense at all, it ought to read that it is "the sense of Congress that whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States, whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people," et cetera, the entertainment and written media industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol. So we ought to include the written media in there, too.

Mr. GLENN. Mr. President, might we have order. I think what the Senator is saying is very important. I have been listening to it. I wish everyone was.

Mr. HARKIN. Thank you, Mr. President. I thank the distinguished Senator from Ohio. As I said, I know it is late. I did not mean to take this much time. But I wanted to make this point on alcohol. I have been waiting a long time during this debate on drugs to hear someone get up and talk about it. I thought the last amendment may have been it but now they talk about glamorizing illegal drugs and you flip through the magazines and it is a legal drug that is glamorized.

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

Mr. HARKIN. I will in just a moment. I am going to finish very shortly.

When we talk about glamorizing the drugs, there is nothing more glamorized than alcohol and yet there is little in this bill that is going to attack alcoholism at all. And I will also further point out—I see my distinguished chairman Senator WEICKER sitting here, who has done an outstanding job in this regard—just last February the administration proposed cutting the Alcohol, Drug Abuse, and Mental Health Administration's funding by $12 million—cutting it when we need the kind of help that the distinguished chairman has been trying to provide, to help with the problem of acute alcoholism in this country and the problems that it causes with mental health.

I do not have an amendment ready on alcohol, but I think this body ought to address itself to it, either on tax-deductible status of advertising or deglamorizing alcohol, but we ought to pay attention to it and we ought not to shirk our responsibility to provide adequate funds necessary to combat alcoholism in this country. More money should be put into the education of our young on this issue.

If we can provide $4 billion over the next 4 years to buy jets and high-speed aircraft and radar stations, and lord knows what else, to keep the illegal drugs from coming into this country, surely we can spend a few million to cut down on the alcohol abuse by our young people in this country. It would cost a heck of a lot less and it would go a lot further toward really stopping drug use in this country than all those radar stations, all those high-speed aircraft, and everything else. You deglamorize alcohol, you educate the kids about alcohol as a drug, and then we will get them thinking about not taking the hard drugs.

I want to end on this point about the attitudes of young people toward alcohol.

□ 2400

Young people in this country do not believe that alcohol is a drug. In fact, in a recent study that was made, most of the young people in the country, high school students, when asked to identify whether alcohol was a drug, said that it was not a drug. They identified PCP, crack, pot, barbiturates, and heroin as drugs, but over 72 percent of the youths said alcohol is not a drug.

That is the real problem. That is what we ought to start teaching our young people.

The most insidious drug in our society is alcohol. Yet, we are not even teaching them that.

So, rather than trying to offer amendments to get videos to produce films and programs and records to reject illegal drug use, my amendment, as a sense-of-the-Senate resolution, would encourage our schools to start teaching young people that alcohol is a drug, an addictive drug. If we want to win the war on drugs, let us fight the first battle, against alcohol. If we win that battle, we can win the other ones.

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

Mr. HARKIN. I yield to the Senator from Ohio.

Mr. GLENN. Mr. President, I compliment the Senator from Iowa. I

think his remarks have been right on target this evening. I know this may not be the hour for his comments, and they were not particularly well listened to, but I hope he will repeat them at a later date.

I visited one of our leading drug and alcohol treatment centers in this Nation a few weeks ago and talked to people there and know the trauma they have been through.

I think the Senator is right on target. Alcohol kills 25,000 people a year just on the highways of our country. Every 2 years, we equal all the slaughter of the Vietnam war—every 2 years.

The real answer to alcohol and drugs is not sealing our borders. It is as we get peer pressure not to use. We are only putting some 10 percent of the money in this bill into education, in trying to get the peer pressure off using.

A little while ago, the distinguished Senator from Connecticut [Mr. WEICKER] was talking about the need for $375 million, and I agree with Senator WEICKER's comments on that. I submit that we might add that to what we did on the reconciliation bill last week. What a sham that was. We did everything else on the reconciliation bill; we might as well do this, too.

So there is no problem getting the money, after what we did last week.

I compliment the Senator for his remarks. I hope they are repeated in this Chamber when the audience is a little more receptive and when people across the country are watching. I think he was right on target.

AMENDMENT NO. 3065

(Purpose: To express the sense of Congress that the entertainment industry take certain steps to assist in the national war against illegal drugs)

Mr. HARKIN. Mr. President, there is an amendment at the desk. I assume that it is going to be voted on and that there will be a rush of judgment to show our strength and determination to stop drug use. In that sense, I send to the desk an amendment in the nature of a substitute.

The PRESIDING OFFICER (Mr. MCCONNELL). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 3065 to amendment numbered 3062:

On page , line , after , insert the following:

It is the sense of Congress that, whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States; whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment and written media industry should voluntarily refrain from producing material meant for general or encourages the use of illegal drugs and alcohol and the entertainment which in any way glamorizes industry and written media further is encouraged to develop films, television programs, records, and videos and advertising which encourages the rejection of illegal drug usage and alcohol use.

SEVERAL SENATORS. Vote! Vote!

Mr. DOMENICI. Mr. President, as I understand it, the amendment adds the written industry and adds alcohol wherever the Domenici amendment referred to the entertainment industry and drugs. I think the amendment is a good amendment. I accept it, and I hope the Senate will adopt this substitute.

Mr. THURMOND. Mr. President, we accept the amendment on this side.

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

The amendment (No. 3062), as modified by amendment No. 3065 was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3066

Mr. LEAHY. Mr. President, I have an amendment on behalf of myself, Senator HATCH, and Senator DENTON, which I send to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. HATCH, and Mr. DENTON, proposes an amendment numbered 3066.

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

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

The amendment is as follows:

Strike section 1802 of the bill and insert in lieu thereof the following:

SEC. 1802. CRIMINAL ORGANIZATIONS, FEES AND FEE WAIVERS.

(a) Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirments of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence [(as defined in Executive Order 12333)], or international terrorism [(as defined in the Foreign Intelligence Surveillance Act)], and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

(b) Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or a requester is indigent and can demonstrate a compelling need for the documents.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (i)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has

previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo provided that the court's review of the matter shall be limited to the record before the agency.

Mr. LEAHY. Mr. President, the bill contains language concerning release of law enforcement records under the Freedom of Information Act which passed the Senate in 1984. The language of our amendment addresses the problem which was the concern of the original proposal, the use of FOIA by sophisticated criminal enterprises to learn about ongoing criminal investigations. But, it is narrower and more acceptable to legitimate users of FOIA, especially the news media.

In addition, our amendment addresses the problem of FOIA fees and fee waivers so that more of the costs of FOIA will be recouped, and at the same time relieve the news media of the need to pay a high cost for access to Government records.

Mr. MATHIAS. Mr. President, will the Senator yield so that I may offer an amendment to the amendment?

Mr. LEAHY. I yield.

AMENDMENT NO. 3067

Mr. MATHIAS. Mr. President, I send to the desk an amendment to the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Maryland [Mr. MATHIAS] for Mr. LEAHY, himself, and Mr. THURMOND, proposes an amendment numbered 3067 to amendment No. 3066.

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

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. MATHIAS. Mr. President, today the Senate considers an amendment to the drug bill that embodies an important bill to enhance the privacy of Americans and update the provisions the 1968 Wiretap Act—the Electronic Communications Privacy Act of 1986.

A measure similar to this amendment has already been approved by the other body. H.R. 4952 passed the House Judiciary Committee by a vote of 34 to 0. That bill passed the House by a voice vote on June 24. In the Senate, the Electronic Communications Privacy Act has also been thoroughly considered. The Subcommittee on Patents, Copyrights and Trademarks held hearings last fall on an earlier version of this legislation. After House passage of H.R. 4952, I joined with Senator LEAHY to introduce an identical companion bill, S. 2575. With some modifications, that bill received the unanimous approval of the Subcommittee on Patents, Copyrights and Trademarks on August 12, and, with further improvements, was ordered reported by the full Judiciary Committee on September 19. The revised version embodied in this amendment enjoys the active support of the Department of Justice, of numerous affected communications and computer businesses and trade associations, and of the American Civil Liberties Union.

I have given this thumbnail sketch of the history of this legislation in order to show that the problems addressed by this amendment have been thoroughly studied, and the solutions it proposes have been significantly refined, throughout the legislative process. In these closing days of the Congress, many measures come before the Senate without the benefit of such careful scrutiny; I can assure the Senate that this is not one of them.

As I mentioned earlier, this amendment enjoys the strong support of the Department of Justice. Currently, the Department is operating under the 1968 Wiretap Act. Many vital law enforcement functions are unnecessarily inhibited because that act, written almost 20 years ago, did not anticipate the many changes in technology and business organization that have occurred over the past two decades.

For example, this amendment would provide the Department with clear authority to conduct so-called "roving" wiretaps. Many drug dealers are sophisticated. They know that their phone could be tapped under an appropriate court order. Therefore, they do not use their own phone. They instead use public telephones—moving among several phones for their illicit business contacts. This amendment gives the FBI explicit authority to obtain a court order to tap these phones and listen to these conversations. It recognizes that under carefully defined circumstances the court should be able to order the conversations of a particular person to be taped rather than just those from a specific telephone.

The bill also clarifies the use of pen registers and trap and trace devices. Pen registers keep a record of all the phone numbers dialed from a particular phone. Trap and trace devices are similar, keeping track of the phone numbers from which all incoming telephone calls are placed. Pen registers have been in existence for many years, but effective and inexpensive trap and trace devices are of much more recent vintage and were not practical at the time the 1968 law was written. With the breakup of the Bell System, the need has grown for uniform statutory rules covering these devices. This amendment provides explicit authority for magistrates to order the installation of pen registers and trap and trace devices, providing another important tool for law enforcement agencies in their effort to root out organized drug syndicates.

Another important law enforcement feature of this amendment is the clarification of the status of mobile tracking devices. These electronic devices can be installed in the vehicle of a suspect, or secreted in an illicit shipment of drugs so that law enforcement agents can follow the movements of the vehicle or the countraband shipment. Under existing law there are several ambiguities about the use of such devices. This is particularly true when a device is installed in an object that may move across jurisdictional lines. This amendment clarifies the law and makes it clear that a court has the authority to order the installation of such a device, and that once installed that order remains valid even if the vehicle or other object in which the device is installed is moved across jurisdictional lines by the suspect. This will greatly enhance the Government's ability to follow drug shipments and establish the chain of distribution.

These important law enforcement tools should be provided to law enforcement agencies to aid them in acquiring the necessary evidence against major drug smugglers and distributors.

In essence, the Electronic Communications Privacy Act [ECPA] responds to new developments in computer and communications technology by amending title III of the Omnibus Crime Control and Safe Streets Act of 1968—the Federal wiretap law—to protect against the unauthorized interception of electronic communications. Currently, title III covers only voice communications. The amendment expands coverage of the wiretap act to include data and video communications on nearly the same basis as conventional telephone technology. In addition, the amendment eliminates the distinction between common carrier communications and private carrier communications. The ECPA extends privacy protection to new forms of electronic communications, but is careful to exempt media in which privacy is not expected, such as tone only paging devices; amateur radio services; police, fire, and other public safety radio communications systems; and many satellite transmissions, including network feeds destined for rebroadcast, and satellite cable programming as defined in section 705 of the Communications Act of 1934.

The amendment that Senator LEAHY and I are offering today incorporates the improvements in the ECPA made by the Subcommittee on Patents, Copyrights and Trademarks and by the full Judiciary Committee. This

substitute amendment makes several minor and technical changes in the bill. Senator LEAHY has already placed a summary of this amendment in the RECORD. But I want to call the attention of my colleagues to the most important differences between the Senate and House versions of this important legislation.

First, the Federal Communications Commission has brought to our attention the problem they have encountered in a recent highly publicized case of "jamming" of satellite cable programming. The FCC has suggested a new provision to clarify and strengthen legal protection against deliberate or malicious interference with satellite transmissions. Senator THURMOND has suggested that this bill may be an appropriate vehicle for this important but noncontroversial change, and the subcommittee has agreed.

Second, a recurring concern throughout the consideration of this legislation has been the fear of liability for inadvertent overhearing of electronic communications. The changes made by the House have gone a long way toward allaying this fear, but to drive the point home, this amendment provides that only intentional acts of interception—those meeting the highest standard of specific intent—can be punished criminally.

Finally, the Judiciary Committee has wrestled with another problem that was considered at length on the House side: criminal liability for unencrypted radio signals, particularly private satellite video transmissions.

The problem is to strike the right balance between privacy policy and the realities of physics. Individuals and businesses surely expect privacy when they participate in a private video-teleconference or, in the case of a television network, when they transmit raw news footage via satellite by a "backhaul feed." Certainly the law ought to enforce that expectation of privacy. At the same time, the engineers tell us that home satellite dishes may be able to receive some of this material, and that for truly private communications, encryption is a viable alternative.

This amendment contains substantial barriers to imposing liability on satellite dish owners: the exemption for cable programming and network feeds, for example, and the requirement of an "intentional" interception. But, at the urging of Senator LAXALT, Senator GRASSLEY, and others, we have re-examined this issue. The amendment before the Senate provides a remedy for intentional interception of private video transmissions via satellite; but in a proceeding brought by the g[Government it would reduce that sanction to the lowest possible level—injunctive relief. It also provides for lower statutory damages in private suits involving interception of video transmissions via satellite than those imposed for other types of violations. We believe this strikes the right balance: It defines these interceptions as wrongful, but takes into account the equities on the other side of the issue. This is particularly true since these interceptions are already covered by section 705 of the Communications Act. The provisions in this legislation are in addition to any remedies that may be available to the Government or to a private party under the Communications Act.

In addition, the substitute amendment now before the Senate incorporates important changes suggested by Senator SIMON and adopted by the Judiciary Committee. One of those changes is the elimination of the 6-month jail term, included in the House-passed bill, for first offenders whose conduct is the interception of the cellular portion of a telephone call and when the offender has committed no act beyond listening to the contents of the call. In this instance as well, we submit—and the Judiciary Committee has agreed without dissent—that the preservation of a criminal penalty for these cases, although at a sharply reduced level of punishment, embodies an appropriate balancing of the interests involved.

As I have already mentioned, many Senators have contributed to the development of this comprehensive privacy legislation. However, I would like to take this opportunity to commend particularly the efforts of the Senator from Vermont [Mr. LEAHY] who has worked tirelessly on this proposal from its origination through its successful conclusion. In the other body, the chairman and ranking minority member of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Representatives ROBERT KASTENMEIER and CARLOS MOORHEAD, have shown exemplary leadership on this issue, and I am confident that through their continued efforts, this important and innovative bill will soon arrive on the President's desk for signature.

Mr. LEAHY. Mr. President, today we take up the Anti Drug Abuse Act of 1986. I was on the task force that produced major portions of this bipartisan package. This bill, S. 2878, is important legislation. It will go a long way in our national fight against drug abuse.

Senator MATHIAS is offering an equally important amendment. The amendment is the Electronic Communications Privacy Act which the Senate Judiciary Committee passed unanimously on September 19, the House has already unanimously passed the companion measure, H.R. 4952. The distinguished chairman of the Judiciary Committee, Senator THURMOND, is a cosponsor of this amendment.

Mr. President, let me take a few minutes to explain why this electronic communications privacy amendment is not just important, but necessary. Not long ago, a message was transmitted by first-class mail, by wire, or by some form of wireless communications link. Each had its advantages and vulnerabilities. Each was regulated by separate legislation that provided a legal framework of appropriate privacy protection for the user. It was a neat and tidy world, in which private users, common carriers, and Government knew their rights and limits.

Today, Americans have at their fingertips a broad array of telecommunications and computer technology, including electronic mail, voice mail, electronic bulletin boards, computer storage, cellular telephones, video teleconferencing, and computer-to-computer links. These technological advances are wonderful. They make the lives of individual citizens easier and they promote American business.

Unfortunately, most people who use these new forms of technology are not aware that the law regarding the privacy and security of such communications is in tatters.

The primary law in this area is the Federal wiretap statute, title III of the Omnibus Crime Control and Safe Streets Act of 1968. When title III was written 18 years ago, Congress could barely contemplate forms of telecommunications and computer technology we are starting to take for granted today. Congress could not envision the dramatic changes in the telephone industry which we have witnessed in the last few years. Today, a phone call can be carried by wire, microwave or fiber optics. Even a local call may follow an interstate path. And an ordinary phone call can be transmitted in different forms—digitized voice, data or video. In addition, since the divestitute of AT&T and deregulation, many different companies, not just common carriers, offer a wide variety of telephone and other communications services.

In short, technology and the structure of the communications industry have outstripped existing law.

Senate bill 2575, the Electronic Communications Privacy Act of 1986 which I introduced with Senator MATHIAS and which Senators THURMOND, STAFFORD, ANDREWS, and DECONCINI have cosponsored, is designed to update title III of the Omnibus Crime Control and Safe Streets Act to provide a reasonable level of Federal privacy protection to these new forms of communication.

The amendment Senators MATHIAS, THURMOND, and I are offering today is the culmination of 2 years of hard work with Congressmen KASTENMEIER and MOORHEAD and their staffs on the House Judiciary Subcommittee on

Courts, Civil Liberties, and the Administration of Justice. We have also worked with the Department of Justice, the American Civil Liberties Union, representatives of the computer and telecommunications industry, the Federal Communications Commission, representatives of the satellite dish industry and satellite dish owners, radio hobbyists, and technology and privacy groups. I want to thank all those people who have worked with me, with Senator MATHIAS and our staffs to make the Electronic Communications Privacy Act better.

Let me describe the Electronic Communications Privacy Act briefly. It provides standards by which law enforcement agencies may obtain access to both electronic communications and the records of an electronic communications system. These provisions are designed to protect legitimate law enforcement needs while minimizing intrusions on the privacy of system users as well as the business needs of electronic communications system providers.

At the request of the Justice Department, we strengthened the current wiretap law from a law enforcement perspective. Specifically, we expanded the list of felonies for which a voice wiretap order may be issued and the list of Justice Department officials who may apply for a court order to place a wiretap. We also added a provision making it easier for law enforcement officials to deal with a target who repeatedly changes telephones to thwart interception of his communications, and created criminal penalties for those who notify a target of a wiretap in order to obstruct it.

These provisions are particularly important to the Justice Department's fight against drugs.

The legislation also creates a statutory framework for the authorization and issuance of orders for pen registers and trap and trace devices. It also creates civil penalties for the users of electronic communications services whose rights under the bill are violated. Finally, it preserves the careful balance governing electronic surveillance for foreign intelligence and counterintelligence purposes embodied in the Foreign Intelligence Surveillance Act of 1978. And it provides a clear procedure for access to telephone toll records in counterintelligence investigations.

Since we introduced S. 2575 in June, Senator MATHIAS and I have continued to improve this legislation, and the amendment we are offering today includes several important changes.

In order to address the recent "Captain Midnight" incident, at the request of the FCC, we added a provision to increase the penalties for the intentional or malicious interference with a satellite transmission.

We wanted to underscore that the inadvertent reception of a protected communication is not a crime. In order to do that, we changed that state of mind requirement under title III of the Omnibus Crime Control and Safe Streets Act from "willful" to "intentional."

Mr. President, as the Subcommittee on Patents, Copyrights and Trademarks prepared to mark up S. 2575, Senators LAXALT, GRASSLEY, DECONCINI, GORE, and SIMPSON expressed concerns about the bill's penalty structure for the interception of certain satellite transmissions by home viewers. In order to address those concerns we have completely restructured the penalty provisions for such conduct.

That restructuring is accomplished through Senator GRASSLEY's proposal which eliminates from the Electronic Communications Privacy Act, criminal penalties for the home viewing of private satellite video communcations. Senators LAXALT, MCCONNELL, SIMPSON, and DENTON are cosponsors of the Grassley amendment.

Senator GRASSLEY's proposal is incorporated in the amendment we are offering today. I would like to describe that proposal briefly. The criminal penalties and civil liability provisions of chapter 119 of title 18 of the United States Code have been modified so that there is a two-track, tiered penalty structure for home viewing of private satellite transmissions when that conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage for private commercial gain.

On the public side, a first offender would be subject to a suit by the Government for injunctive relief. If injunctive relief is granted, one who violates the injunction would be subject to the full panoply of enforcement mechanisms within the court's existing authority, including criminal and civil contempt. Second and subsequent offenses carry a mandatory $500 civil fine for each violation. The term "violation" in this context refers to each viewing of a private video communication.

On the private side, a person harmed by the private viewing of such a satellite communication may sue for damages in a civil action. If the defendant has not previously been enjoined in a Government action as described above, and has not previously been found liable in a civil suit, the plaintiff may recover the greater of his actual damages or statutory damages of $50 to $500. A second offender—one who has been found liable in a prior private civil action or one who has been enjoined in a Government suit—is subject to liability for the greater of actual damages or statutory damages of $100 to $1,000. Third and subsequent offenders are subject to the bill's full civil penalties.

It also takes outside the penalty provisions of the Electronic Communications Privacy Act, the interception of a satellite transmission via audio subcarrier if the transmission is intended for redistribution to facilities open to the public, provided that the conduct is not for the purpose of direct or indirect commercial advantage or private financial gain. Audio subcarriers intended for redistribution to the public include those for redistribution by broadcast stations and cable and like facilities. They also include those for redistribution to buildings open to the public like hospitals and office buildings that pump in music which has been transmitted via subcarrier. As specified in the substitute, this audio subcarrier exclusion does not apply to data transmissions or to telephone calls.

The private viewing of satellite cable programming, network feeds, and certain audio subcarriers will continue to be governed exclusively by section 705 of the Communications Act, as amended, and not by chapter 119 of title 18 of the United States Code.

Mr. President, this is a very good compromise. Those Senators who originally brought these concerns to our attention, are happy with it. So are the representatives of the satellite dish owners and manufacturers.

Senator SIMON expressed concerns that the Electronic Communications Privacy Act's penalties were too severe for the first offender who, without an unlawful or financial purpose, intercepts a cellular telephone call or certain radio communications related to news-gathering. Senator MATHIAS and I have accepted Senator SIMON's proposal, and it is incorporated in the amendment we are offering today. Senator SIMON's proposal reduces the penalty for such an interception of an unencrypted, unscrambled cellular telephone call to a $500 criminal fine. Unencrypted, unscrambled radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules are treated like private satellite video communications are under Senator GRASSLEY's proposal.

Because we have been able to reach agreement on the GRASSLEY and SIMON proposals there are no outstanding issues to be resolved in the Electronic Communications Privacy Act.

Mr. President, the staff of the Senate Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks has prepared a summary of the Electronic Communications Act. I ask unanimous consent that the summary of the amendment be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. LEAHY. Mr. President, I would like to thank all those who have worked with us to bring the Electronic Communications Privacy Act to the point of Senate passage. First, let me thank Senator MATHIAS and his staff, Steve Metalitz and Ken Mannella. Senator THURMOND and his staff, Dennis Shedd and Cindy Blackburn have been very helpful.

I also would like to thank Congressmen KASTENMEIER and MOORHEAD and the staff of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice, David Beier, Deborah Leavy, and Joe Wolfe. Finally, I would like to thank my own staff, John Podesta, Ann Harkins, and Tom Hodson.

Mr. President, let me just remind my colleagues in closing, that since the beginning of our national history, first-class mail has preserved privacy while promoting commerce. Today a wide variety of new technology is used in American businesses and American homes side by side with first class mail. It is high time we updated our laws to bring them in line with that technology.

EXHIBIT 1

A SUMMARY OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT

The Electronic Communications Privacy Act amends Title III of the Omnibus Crime Control and Safe Streets Act of 1968—the federal wiretap law—to protect against the unauthorized interception of electronic communications. It amends the 1968 law to update and clarify federal privacy protections and standards in light of dramatic changes in new computer and telecommunication technologies. Originally introduced in the Senate as S. 1667 by Senators Leahy and Mathias, and H.R. 3378 by Congressmen Kastenmeier and Moorhead, the bill has gone through a substantial revision as a result of negotiations with interested Senators and their staffs, various industry and privacy groups and the Department of Justice.

On June 11, the House Judiciary Committee unanimously reported H.R. 4952. On June 19, Senators Leahy and Mathias introduced that bill as S. 2575. On June 23, the House passed H.R. 4952. On August 12, the Subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee reported S. 2575. During Subcommittee consideration some Senators expressed concern that the penalties for private viewing of certain satellite transmissions were too severe. Their concerns have been addressed by a reduction of the private and public penalties for home viewing. The bill also addresses the recent Captain Midnight incident by increasing penalties for interference with satellite transmissions. On September 19, the Judiciary Committee passed the Electronic Communications Privacy Act.

The Justice Department strongly supports this legislation.

Highlights of the Electronic Communications Privacy Act of 1986 follow:

Currently, Title III covers only voice communications. The legislation expands coverage to include video and data communications.

Currently, Title III covers only common carrier communications. The legislation eliminates that restriction since private carriers and common carriers perform so many of the same functions today that the distinction no longer serves to justify a different privacy standard.

At the request of the Justice Department, the Electronic Communications Privacy Act continues to distinguish between electronic communications (data and video) and wire or oral communications (voice) for purposes of some of the procedural restrictions currently contained in Title III. For example, court authorization for the interception of a wire or oral communication may only be issued to investigate certain crimes specified in Title III. An interception of an electronic communication pursuant to court order may be utilized during the investigation of any federal felony.

Wire communications in storage, like voice mail, remain wire communications.

To underscore that the inadvertent reception of a protected communication is not a crime, the legislation changes the state of mind requirement under Title III from "willful" to "intentional."

Certain electronic communications are exempted from the coverage of the Electronic Communications Privacy Act including:

The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

Tone-only paging devices;

Amateur radio operators and general mobile radio services;

Marine and aeronautical communications systems;

Police, fire, civil defense and other public safety radio communications systems;

Specified transmissions via audio subcarrier;

The satellite transmission of network feeds;

The satellite transmission of satellite cable programming as defined in Section 705 of the Communications Act of 1934;

Any other radio communication which is made through an electronic communications system that is configured so that such communication is "readily accessible to the general public," a defined term in the bill.

The term readily accessible to the general public does not include communications made by cellular radio telephone systems; therefore, the bill continues current restrictions contained in Title III against the interception of telephone calls made on cellular telephone systems. However, the criminal penalty for an unlawful interception of a cellular phone call and similar communications is reduced from the current five-year felony.

Under the Simon amendment that criminal penalty is reduced to a $500 fine.

The Electronic Communications Privacy Act expands the list of felonies for which a voice wiretap order may be issued. It also expands the list of Justice Department officials who may apply for a court order to place a wiretap.

The Electronic Communications Privacy Act creates a limited exception to the requirement that a wiretap order designate a specific telephone to be intercepted where the Justice Department makes a showing that the target of the wiretap is changing telephones to thwart interception of his or her communications.

A telephone company may move to quash an order for such a "roving tap" if compliance would be unduly burdensome.

The Electronic Communications Privacy Act makes it a crime for a person who has knowledge of a court authorized wiretap to notify any person of the possible interception in order to obstruct, impede or prevent such interception.

Title II of the legislation creates parallel privacy protection for the unauthorized access to the computers of an electronic communications system, if information is obtained or altered. It does little good to prohibit the unauthorized interception of information while it is being transmitted, if similar protection is not afforded to the information while it is being stored for later forwarding.

The legislation establishes criminal penalties for any person who intentionally accesses without authorization a computer through which an electronic communication service is provided and obtains, alters or prevents authorized access to a stored electronic communication. The offense is punished as a felony if committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain; otherwise it is punished as a petty offense.

Providers of electronic communication services to the public and providers of remote computing services to the public are prohibited from intentionally divulging the contents of communications contained in their systems except under circumstances specified in the Electronic Communications Privacy Act.

The contents of messages contained in electronic storage of electronic communications systems which have been in storage for 180 days or less may be obtained by a government entity from the provider of the system only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant.

The content of messages stored more than 180 days and the contents of certain records stored by providers or remote computer processing services may be obtained from the provider of the service without notice to the subscriber if the government obtains a warrant under the Federal Rules of Criminal Procedure or with notice to the customer pursuant to an administrative subpoena, a grand jury subpoena, or a court order based on a showing that there is reason to believe that the contents of the communication are relevant to a legitimate law enforement inquiry. Provisions for delay in notice are also included.

An electronic communications or remote computing service provider may disclose to a non-governmental entity customer information like mailing lists, but not the contents of the communication. Disclosure of such information to the government is required, but only when the government obtains a court order, warrant, subpoena, or customer consent.

At the FCC's request, a section was added to the legislation to address problems highlighted by the recent Captain Midnight incident. The Electronic Communications Privacy Act increases penalties for the intentional or malicious interference with satellite transmissions.

The legislation clarifies that telephone companies and other service providers are not civilly or criminally liable for good faith assistance to law enforcement agencies.

Civil penalties are created for users of electronic communications services whose rights under the legislation are violated.

The Grassley amendment, which the sponsors have accepted, sets up a reduced penalty structure for the private home

viewer whose reception of specified satellite transmissions is not for commercial gain.

The Simon amendment, which the sponsors have accepted, sets up the same penalty structure for the interception of radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules.

The penalty structure under the Grassley and Simon amendments is:

A first offender will be subject to a suit by the federal government for injunctive relief. If injunctive relief is granted, the court may use whatever means in its authority, including civil and criminal contempt, to enforce that injunction. It must impose a $500 civil fine. In addition, the penalty for second and subsequent offenses is a $500 fine in a suit brought by the government.

Under the private civil damages provisions of the Electronic Communications Privacy Act the first offender may be sued for the greater of actual damages or statutory damages of $50 to $500. The second offender is subject to suit for the greater of actual damages or statutory damages of $100 to $1000. Third and subsequent offenders are subject to full civil damages under the Electronic Communications Privacy Act.

The legislation creates a statutory framework for the authorization and issuance of an order for a pen register or a trap and trace device based on a finding that such installation and use is relevant to an on-going criminal investigation.

Mr. THURMOND. Mr. President, today, I rise in support of the amendment to H.R. 5484, the Electronic Communications Privacy Act of 1986. This amendment is similar to S. 2575, the Senate companion, which is currently pending in the Judiciary Committee.

As a cosponsor of S. 2575, the Senate bill, I commend Senator PATRICK J. LEAHY and Senator CHARLES MCC. MATHIAS, JR., for introducing this much-needed legislation. The bill is the product of over a year's worth of negotiations and is now strongly supported by business groups as well as the Justice Department.

This legislation updates present wiretap law which currently provides privacy protection only for voice communications that are transmitted in whole or part by wire by adding new protection for certain voice communications, regardless of how they are transmitted, as well as data communications and electronic mail.

This legislation is necessary due to the changes that have occurred in communications technology since the current law was enacted in 1968. Along with providing privacy protection for new forms of technology, this bill also clarifies the procedures that law enforcement officers must follow when they seek permission for a wiretap.

When S. 2575, which is currently pending in the Judiciary, was first introduced and referred to the committe, it contained a provision that would make it a criminal offense to intercept satellite communications—known as "backhauls"—which are transmissions between a television affiliate and the network, as well as video conferences transmitted by satellite. Concern has been expressed in the committee that such a provision may unfairly subject unknowing satellite dish owners to criminal liability. This amendment responds to this concern by providing that a person must intentionally intercept such communications to be subject to penalties, and those penalties will be civil only. This amendment also contains other changes which serve to strengthen this bill.

I believe that this amendment strikes a reasonable balance between legitimate privacy concerns and the importance of Federal officials using electronic surveillance as an effective and valuable law enforcement tool. Because this needed legislation is supported by all members of the Judiciary Committee, and because I have been informed that the essence of this Senate amendment will be maintained through conference, I am willing to support this expedited process. My colleagues in the Senate should also be aware that the sponsors of this legislation will continue to seek Judiciary Committee approval of the companion bill. I urge each one of my colleagues to vote for this amendment, and support the amended bill.

Mr. President, the House has passed this amendment. The Senate Judiciary Committee considered it carefully. We approved it, and the report is here now in the Senate. We accept the amendment.

Mr. DANFORTH. This legislation covers some conduct that also is prohibited under section 705 of the Communications Act of 1934. Do I understand correctly that the sanctions contained in this legislation would be imposed in addition to, and not instead of, those contained in section 705 of the Communications Act?

Mr. MATHIAS. That is correct. This legislation is not intended to substitute for any liabilities for conduct that also is covered by section 705 of the Communications Act. Similarly, it is not intended to authorize any conduct which otherwise would be prohibited by section 705. The penalties provided for in the Electronic Communications Privacy Act are in addition to those which are provided by section 705 of the Communications Act.

As a general rule, conduct which is illegal under section 705 of the Communications Act would also be illegal under this bill. These supplemental sanctions are particularly important where an unauthorized interception is made for direct or indirect financial gain. This bill is designed to help put an end to such conduct.

The exception to the general rule is that we do not provide liability for the noncommercial private viewing of unscrambled network feeds to affiliated stations by the owners of home satellite dishes. Accountability for that conduct will be determined solely under section 705 of the Communications Act. The private viewing of any other video transmission not otherwise excepted by section 705(b) could be subject to action under both the Communications Act and this legislation.

Mr. DANFORTH. So although the proposed legislation which amends title 18 of the United States Code replaces, for specified conduct, the penalty structure of the Electronic Communications Privacy Act as introduced, and substitutes a scheme of public and private remedies under title 18, am I correct that conduct prohibited by the Communications Act will continue to be governed by that act?

Mr. MATHIAS. That is correct. Conduct which is not prohibited by the Electronic Communications Privacy Act, but which is prohibited by the Communications Act, still will be subject to the full range of remedies and penalties under the Communications Act.

Mr. DANFORTH. I thank the distinguished Senator for this clarification.

Mr. HATCH. Mr. President, I am pleased to join this amendment. Senator LEAHY and I have worked together to fashion a balanced protection for law enforcement records.

We have added protections for foreign counterintelligence and terrorism records. On this portion, we owe gratitude to Senator DENTON whose work on the Terrorism Subcommittee aided this amendment.

The limited fee waivers of this change also facilitate the beneficial goal of media access to some records.

These and many other provisions will greatly strengthen the enforcement ability against this national drug crisis. Another important provision involves the Freedom of Information Act. This section will protect a few narrow law enforcement files from mandatory disclosure. This section was nearly the same as part of S. 774 which unanimously passed the Senate last Congress.

Most important, this section will directly improve drug enforcement. In 1982 the DEA did a study on the impact of FOIA on drug investigations. That study found, among other things, that:

85 percent of the DEA's Agents considered the FOIA to be inhibiting their operations.

78 percent of DEA's investigations (303 cases) involved the recruitment and use of confidential sources. Of this total:

(a) 47 percent of the enforcement investigations involved difficulty obtaining information from witnesses or defendants. Sixteen percent of these problems were directly attributed to the FOIA; and

(b) 26 percent of the enforcement investigations involved a reluctance or an unwillingness on the part of informants to cooperate with DEA. One-third of the instances were directly attributed to the FOIA.

More than 60 percent of the FOIA and Privacy Act requests received by DEA originate from within the criminal element.

This study focused on only investigations that were actually initiated. No insight was gained as to the opportunities lost on investigations that were not developed because persons failed to come forward with information for fear of FOIA exposures. In the final analysis, the loss of such investigative opportunities may far outweigh the adverse effects revealed in the study. That 1982 study concluded that many investigations are aborted, compromised, or reduced in scope because of FOIA exposure.

This is not the only study establishing the problem. In 1978 the Senate Judiciary Subcommittee on Criminal Law concluded that:

It can safely be said that none [of the sponsors of FOIA] foresaw the host of difficulties the legislation would create for the law enforcement community, nor did they foresee the utilization that would be made of the act by organized crime and other criminal elements or the damage it would do to the personal security of individual citizens, * * * Informants are rapidly becoming an extinct species because of fear that their identities will be revealed in response to a FOIA request.

In that same year the General Accounting Office released a study detailing 49 instances of potential informants refusing to cooperate with law informants refusing to cooperate with FOIA. In 1979, FBI Director Webster supplied documentation of over 100 instances of FOIA interference with law enforcement investigations or informants. In 1981, his list was expanded to 204 examples. In 1983, even more examples were brought out by his testimony. In fact, no fewer than five different reports studying the impact of FOIA have concluded that the act has harmed the ability of law enforcement officers to enlist informants and carry out confidential investigations. Among these, the Attorney General's 1981 Task Force on Violent Crime found the FOIA should be amended because it is used by lawbreakers "to evade criminal investigation or retaliate against informants."

A mainstay of drug enforcement today is the volunteered statements and background information provided to Federal agencies by confidential sources, particularly for key criminal enterprises relating to narcotics, organized crime, and extremist violence. However, because of the large volume of FOIA requests from known or suspected criminals, many sources—citizens and "street" informants alike—have become reluctant to assist the FBI or DEA because of fears that the Government cannot protect their identities. This is not merely a perception problem. Indeed, confidential law enforcement information is disclosed to organized crime and drug dealers through FOIA.

Perhaps I could explain these provisions more carefully. FOIA contains an exemption that is supposed to protect informants, but even a quick look at that language reveals that the current protection is not sufficient. Exemption 7 protects "investigatory records compiled for law enforcement purposes but only to the extent such records * * * would disclose the identity of a confidential source * * * and then only when that information was furnished only by the confidential source." Let's examine the massive loopholes in that language. If a record would disclose an informant's identity but is not an investigatory record, it must be disclosed. If a record would disclose an informant's identity but was not compiled for law enforcement purposes, it must be disclosed. Thus, if a record contains informant identities and is not an investigatory record, but a summary of recent successes in drug cases submitted to the Drug Policy Board, it must be disclosed. Is this the kind of protection that our informants deserve. After all, they have put their lives on the line to help us control the drug crisis.

Let us look further at the requirement that a record could only be disclosed if it "would disclose" the identity of an informant. This is a dangerous standard. If a record says that the informant, Joe Jones, drove away in a green sedan, the language of the statute allows the deletion of the informant's name, but that is not the only identifier. The requester who may be the felon, and remember over 80 percent of those requesting information from the DEA in 1985 were from the criminal element, knows that he only has one friend with a green sedan. Yet the DEA has no way of knowing if that information "would identify" the informant. The language of the statute does not clearly protect that information.

Let's look at another example. The DEA record would mention only that the informant is a "she." The statute does not necessarily permit deletion of that pronoun because it referes to half of humanity. It does not clearly identify informant, but what the DEA does not know is that the criminal requester knows that he only told one female, his girlfriend, about his crime. He has found the informant. Without going into more details, I assure my colleagues that this last example is not hypothetical.

The problem with the narrow "would disclose" language is that there is no way for the DEA to know what the criminal requester knows. The criminal may know that one of his friends always calls a party a "bash" or a soft drink a "pop." If one of those words appear in a requested record, he has identified the informant.

I could go on with other examples. For example, the statute says a record may be withheld only if disclosed "only by" that informant. This means that if the DEA also received the information from another informant, it cannot protect either of the two informants because neither are independent sources. Yet the criminal element is not going to worry about such technicalities, it is going to take action when it identifies an informant.

In 1978, our colleague, Senator NUNN held a hearing on this subject. He interviewed an admitted murderer and convicted felon, Gary Bowdach. This is a verbatim rendering of that discussion:

Mr. NUNN. Turning to the Freedom of Information Act, what was your motivation in filing FOIA requests on you own behalf.

Mr. BOWDACH. To try to identify the informants that revealed information to the agencies. * * *

Mr. NUNN. Why did you want to get their names?

Mr. BOWDACH. To know who they were, to take care of business later on.

Mr. NUNN. To take care of business later on? You mean by that to murder them?

Mr. BOWDACH. Yes sir.

What more needs to be said? This murderer states forthrightly that FOIA is used to take revenge on informants. To address this problem, this amendment recommeds very modest changes. It does not gut the information act, but simply states that records may be withheld if it is reasonable to expect that the record could lead to disclosure of the informant's identity. This is reasonableness test that can be tested in the courts. With this background it is easy to see why this language unanimously passed the Senate last Congress.

The current seventh exemption exempts investigatory records compiled for law enforcement purposes if those records also meet one of six further requirements (A to F). The six further criteria are intended to protect enforcement proceedings and against disclosures to suspects, fair trials, personal privacy, identities of informants, investigative techniques, and the life and safety of law enforcement personnel.

The current threshold language of the exemption means that records may be eligible for protection if they are investigatory records complied for law enforcement purposes. This could mean that a record which jeopardizes one of the six requirements, such as "endanger the life * * * of law enforcement personnel," could be disclosed simply because it does not satisfy the formalistic rest of being an investigatory record. This exalts form over substance.

The current language of (7)(A) requires an agency to show that disclo-

sure of a record "interferes" with an enforcement proceeding. At the outset of an investigation, however, the agency often does not know which aspects of a record, if disclosed to the suspect, would interfere with the investigation. Thus the existing language could disclose to a suspect vital information about an ongoing investigation.

The current language of (7)(D) requries that a record conclusively "disclose the identity of an informant" before it qualifies for exemption. This ignores the commonsense principle that some information that does not in itself identify the informant can, in some circumstances known only to the suspect, result in such identification. This is particularly true in organized crime investigations because of the institutional memory of these organizations.

The threshold language about "investigatory" has meant that law enforcement manuals were not covered by the exemption for law enforcement techniques and procedures. The courts have also reached conflicting results about the protection to be afforded prosecutorial guidelines and other law enforcement techniques and procedures.

Finally, the language in (7)(F) has an obvious and absurd limitation. Under this language, records are only exempt if they endanger the life of a police officer, without giving similar protection to the life of any natural person.

Some kinds of investigations are particularly difficult to protect from abuse under FOIA. These are characteristically the kinds of investigations that involve organized crime, terrorism, and foreign counterintelligence. In these instances, the suspects often have the time, resources, and inclination to use FOIA to learn the identities of informants, the progress achieved by various investigations, and methods to avoid detection and prosecution. In short, these entities have in common a detached coordinating agent with the ability and motivation to circumvent the intent of the exemptions.

In hearings before the Constitution Subcommittee, FBI Director Webster documented 204 recent examples of FOIA substantially jeopardizing law enforcement.

This amendment would exempt from disclosure any information that could reasonably be expected to disclose a confidential source, including a State or local government agency or foreign government. This change would afford greater protection to information which should clearly be exempt from disclosure due to its serious implications for law enforcement investigations and the safety of confidential informants.

The present exemption that would disclose a confidential source—the rationale is to broaden the definition of confidential source to include State, local, and foreign governments. Some of the formalistic requirements of exemption 7, such as the threshold requirement that the record must be investigatory, are deleted to focus on preventing harm to law enforcement functions.

With regard to organized crime, there is much evidence of the existence of sophisticated networks of FOIA requesters. Under the current FOIA there is a real danger which accompanies FOIA requests by organized criminal groups who have both the incentive and the resources to use the act systematically—to gather, analyze, and piece together segregated bits of information obtained from agency files. These sophisticated criminals can use the FOIA to determine whether an investigation is being conducted on him or his organization, whether there is an informant in his organization, and even who that informant might be. The release of records containing dates of documents, locations reporting investigations, the amount of material, and even the absense of information are all meaningful when compiled in the systematic manner employed by organized crime.

This amendment would broaden b(7) and provide some additional provisions to protect records compiled in a lawful investigation of organized crime or drug offenses.

Finally, the bill acknowledges that drugs and organized crime constitutes a special problem under FOIA. There is much evidence of the existence of sophisticated networks of organized crime FOIA requesters. For example, organized members in the Detroit area have been instructed to submit FOIA requests to the FBI in an effort to identify FBI informants. Through this concerted effort, the members and associated of this family have obtained over 12,000 pages of FBI documents.

The withholding of information on the basis of one of the enumerated exemptions can often be ineffective in avoiding the anticipated harms that would accompany disclosure because invoking the exemption itself becomes a piece of the mosaic. To invoke (b)(7)(D), for example, is to tell the requester, potentially a criminal seeking information in his illicit organization, exactly what he may want to know—that his organization has an internal informant. Thus, we are adding the new provisions of this bill.

In such a case, the Freedom of Information Act presents the potential for damage to sensitive FBI investigations, even though no release of substantive information is made. A requester with an awareness of the law's provisions, a familiarity with an agency's records systems, and whatever personal knowledge he brings to the situation, can gain insight into FBI operations regardless of his ability to procure a release of Bureau documents. For example, knowledge that a suspected informant's file has grown over a period of time is often enough to tip off the sophisticated criminal that the suspected informant has been talking to law enforcement official too often.

Because of the mosaic problem with FOIA and the particular threat posed by organizations with historical continuity and an institutional memory and further because use of the exemptions themselves can become a "piece of the mosaic," simply broadening existing exemptions will not cure the problem of organized crime abuse of FOIA. Accordingly, the proposed bill's changes to b(7) and the new additions to FOIA relative to law enforcement would exclude from disclosure all documents compiled in a lawful investigation of organized crime which would harm investigations or informants. The new provisions apply with equal force to records concerning foreign counterintelligence and terrorism which have been classified.

FEES AND WAIVERS

The fee waiver provision incorporated into this amendment is taken from H.R. 6414, a bill introduced in the 98th Congress. This provision was changed from the version found in H.R. 6414 to indicate our intent to resolve a few important FOIA issues.

In the first place, this change from H.R. 6414 removes the language "by or on behalf of" to limit the breadth of the categorical waiver provision to those requesters who seek Government records for their own scholarly work or media work. Next, we are removing the language "nonprofit group that intends to make the information available" to clarify that organizations seeking to establish private repositories of public records shall not qualify for a waiver. These groups purport to act as an intermediary between the Government and requesters in seeking records that requesters could seek directly from the Government. This type of private library of public documents, whether operated for profit or not, should not qualify for a waiver under the standards of this bill. Congress never intended such a result and does not change its intention with language.

This amendment also adds the words "in the public interest because it" to bring the new language more into conformance with the standards and language of current law.

This change also strikes from the provisions of the bill allowing reduction of fees the words "a requester is indigent and can demonstrate a compelling need." By striking this language, we intend to eliminate prison-

ers and other indigents from eligibility for reduced fees.

Finally this provision limits significantly the denovo review standard found in H.R. 6414. It strikes the words "reduction or" to specify that denovo review is to apply only to the waiver provisions of this section. Thus, denovo review applies to review of eligibility of scholar, bonafide news representatives, and commercial requesters for waivers. It does not apply to reductions of fees requested under the standards of (iii). These reduction issues will continue to be reviewed under the arbitrary and capricious standard.

The scope of denovo review is also limited to the administrative record. This denovo standard should not be construed to apply to any matters not raised or any evidence not presented in the administrative record.

It's also important to note that this provision makes commercial requesters subject to processing costs in addition to search and duplication fees. This could generate as much as $60 million in additional fees to offset the costs of FOIA processing.

I ask unanimous consent to have a letter from Director Webster printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, DC., September 27, 1986.

Senator ROBERT DOLE,
Majority Leader, U.S. Senate, Washington, DC.,

DEAR SENATOR DOLE: The Omnibus Drug Enforcement, Education, and Control Act contains a provision vitally important to FBI efforts to strengthen drug and organized crime law enforcement programs. This provision would amend the Freedom of Information Act to offer needed protections for confidential undercover informants and investigations.

The cooperation of confidential sources is a mainstay of nearly every successful drug enforcement effort. However, because of the increasingly large volume of FOIA requests from known or suspected criminals, many such sources have become reluctant to assist the FBI or the DEA. Moreover, FOIA disclosures have on numerous occasions compromised investigations and jeopardized the safety of informants.

No fewer than five separate reports on the impact of FOIA, including one done by the GAO, have concluded that the Act has had a harmful effect on undercover and confidential investigations. A recent report by the Drug Enforcement Administration documented that "14% of DEA's investigations were adversely affected by FOIA-related problems to the extent that investigations were aborted, significantly compromised, reduced in scope, or required significant amounts of additional work."

As I have testified before the Senate on a number of occasions, the provisions contained in the pending drug bill are long overdue and likely to make a substaintial contribution to the success of our national battle against harmful drugs and the organized crime elements which distribute them. The Senate has unanimously approved these exact provisions in the previous Congress and I strongly encourage it to do so again.

Sincerely,

WILLIAM H. WEBSTER,
Director.

Mr. GRASSLEY. Mr. President, I am very pleased with the agreements we were able to reach concerning the provisions in this bill which relate to home dish users. First, we have affirmed the right of dish users to listen to all unencrypted audio subcarriers that are redistributed by facilities open to the public. This includes subcarriers meant for redistribution by broadcast stations, cable systems, and like facilities and those subcarriers made available in office buildings and other public places. Further, we have decriminalized the private noncommercial viewing of unscrambled satellite video programming that would have previously resulted in the imposition of criminal sanctions on people who simply view television in the privacy of their own homes.

Anyone who has actually viewed programming from a satellite Earth station will find that many channels are indistinguishable from one another in terms of network, nonnetwork, backhaul, or affiliate feeds. With dozens of sporting events, for example, it is difficult to tell whether one is watching a so-called affiliate feed or a backhaul feed. Similarly, with teleconferences, there is often little difference in screen format from our own hearing or Senate floor coverage.

Finally, by decriminalizing the private viewing of most satellite television signals, we avoid the problem of potentially invading the privacy of these people who watch television in their own homes.

The new sections regarding home dish viewing of private unencrypted satellite video transmissions provide for injunctive relief in the case of intentional viewing of such signals. Intentional viewing means that the Earth station owner must know that he is viewing a prohibited signal and that that type of viewing is not permitted under the act.

So, in this case, the applicable remedy would be injunctive relief and, upon a second occurrence, a $500 civil penalty. This would give networks and other programmers the ability to claim protection under the act without scrambling their signals. These claims would largely be a fiction under any set of circumstances; however, I cannot see imposing criminal sanctions on an innocent viewing public for the benefit of those who could scramble but choose not to.

The new satellite dish provisions would affect 1.5 to 2 million American families nationwide who receive their television programming via satellite. Satellite dish technology is especially important to rural Americans who do not have the same access to a multiplicity of television programming as do their urban counterparts.

I wish to thank my colleagues, Senators LEAHY and MATHIAS, and their competent staffs for their diligent work on resolving the satellite dish issues.

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Mr. WEICKER. Might I ask the distinguished Senator from Maryland what the cost is?

Mr. MATHIAS. There are no costs to this amendment.

Mr. WEICKER. There are no costs involved, there is no additional authorization in this amendment?

Mr. MATHIAS. No.

The PRESIDING OFFICER. The question is on the second-degree amendment.

Mr. CHILES. I move adoption.

Mr. HATCH. I move adoption of the amendment as modified.

The PRESIDING OFFICER. The question is on the second-degree amendment.

Mr. HATFIELD. Mr. President, is there an amendment pending at this moment?

The PRESIDING OFFICER. There are two amendments pending.

Mr. MATHIAS. I move adoption.

Mr. LEAHY. I move adoption of the amendment.

The PRESIDING OFFICER. We have not yet adopted the amendment.

The question is on the second-degree amendment.

The amendment (No. 3067) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the first-degree amendment as amended.

The amendment (No. 3066) as amended was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3068

(Purpose: To amend the Internal Revenue Code of 1954 to provide for the reimbursement to State and local law enforcement agencies for costs incurred in investigations which substantially contribute to the recovery of Federal taxes)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. CHILES] proposes an amendment numbered 3068.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SECTION 1. RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) IN GENERAL.—Subchapter B of chapter 78 of the Internal Revenue Code of 1954 (relating to general powers and duties) is amended by adding at the end thereof the following new section:

SEC. 7624. REIMBURSEMENT TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) AUTHORIZATION OF REIMBURSEMENT.—Whenever a State or local law enforcement agency provides information to the Internal Revenue Service that substantially contributes to the recovery of Federal taxes, such agency shall be reimbursed by the Internal Revenue Service for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary and overtime) not to exceed 10 percent of the sum ultimately recovered. The Internal Revenue Service shall maintain records reflecting the receipt of information from the contributing agency, and shall notify the agency when a recovery has been effected. Following such notification, the agency shall submit a statement detailing the investigative costs incurred. Where more than 1 State or local agency has given information that substantially contributes to the recovery of Federal taxes, the Internal Revenue Service shall equitably distribute the costs reimbursements among those agencies up to an aggregate sum of 10 percent of the taxes recovered.

(b) ESTABLISHMENT OF A FUND.—The Commissioner of the Internal Revenue Service shall establish a fund for recovering that portion of recovered Federal taxes authorized under subsection (a) and intended as reimbursements for state and local law enforcement agencies. In conjunction with the fund, the Commissioner shall develop guidelines on the procedures and timetables for reimbursing those law enforcement agencies which have contributed to the recoupment of Federal taxes.

(c) REIMBURSEMENT.—Reimbursements under section (a) shall be made directly from the fund under subsection (b) prior to the deposit of such funds into the United States Treasury.

(d) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 7624. Reimbursement to State and local law enforcement agencies."

Mr. CHILES. Mr. President, today I am offering an amendment to H.R. 5484. This proposal would amend the Internal Revenue Code of 1954 so as to provide for the reimbursement of investigative expenses incurred by State and local law enforcement agencies when those agencies provide information to the Internal Revenue Service which substantially contributes to the recovery of Federal tax dollars. This reimbursement would not exceed 10 percent of the total sum recovered.

The amendment I introduce today is similar to a bill I introduced earlier in the 99th Congress, S. 2352. This proposal is a result of a series of discussions that I had with law enforcement officials in Florida. It is designed to provide assistance to State and local law enforcement authorities in their efforts to reduce drug-related crime. It corrects an inequity in the present system which leaves State and local authorities uncompensated for their investigative assistance when that assistance leads to recovery of Federal taxes.

Because law enforcement officials bear a large part of the burden in the war on drugs, in terms of time and resources, they should be compensated for these costs. In my own State of Florida, the department of law enforcement has been an ally of the Federal Government in its investigation of targeted crime organizations. It does not recoup its investigative costs. As a result of this practice, the financial benefits go to the Federal Government, while the States suffer from a drain on their resources.

My proposal would also serve to encourage further participation by local agencies in Federal antidrug efforts.

Investigating the financial or economic aspect of criminal activity can be time consuming and expensive. State and local agencies might not have the resources to conduct an investigation of this type and instead choose to leave these investigations alone. The proposed legislation provides a guarantee of reimbursement thereby making it economically feasible for local agencies to assist Federal authorities.

Mr. President, this amendment I am introducing will go a long way in helping our law enforcement authorities crack down on those involved in the drug trade. These officials deserve our help. I ask that this amendment be adopted.

Mr. President, we encourage people to try to help the Internal Revenue Service all the time. Our State and local law enforcement people are doing that.

We have had some big, big major recoveries in which State and local law enforcement have spent much of their resources in doing and find that they could not even share in the proceeds of this.

This amendment will encourage State and local law enforcement agencies to assist IRS. It will bring additional money in.

It can be up to IRS for them to make the decision as to whether they have been of assistance or not. They can only get up to the amount of their expenses and never more than 10 percent.

We have discussed the amendment with the other side. I think it certainly will be greater encouragement to State and local law enforcement agencies and I would like to urge its adoption.

Mr. THURMOND. Mr. President, we accept the amendment.

Mr. CHILES. I move adoption of the amendment, Mr. President.

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

The amendment (No. 3068) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3069

(Purpose: To protect against wrongful use of cyanide)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. GORTON, proposes an amendment numbered 3069.]

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . (a) The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers

of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes;

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(b) On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(c) As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

(3) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Mr. HATCH. Mr. President, I am, on behalf of Senator GORTON, offering an amendment to require the Environmental Protection Agency to study the manufacture and processing of cyanide.

I understand that this amendment has been cleared on both sides.

I ask that the amendment be adopted.

Mr. THURMOND. Mr. President, we accept the amendment.

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

The amendment (No. 3069) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3070

(Purpose: To amend the provisions of the Federal Food, Drug, and Cosmetic Act relating to infant formula)

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

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3070.

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

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

The amendment is as follows:

At the end of title IV, insert the following:

SEC. —. INFANT FORMULA.

Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively;

(2) by striking out the last sentence of paragraph (1) of subsection (f) (as redesignated by clause (1) of this section) and inserting in lieu thereof the following new sentence: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.";

(3) by striking out "(a) and (b)" in the first sentence of subsection (g)(1) (as redesignated by clause (1) of this section) and insert in lieu thereof "(a), (b), and (c)";

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(d)(1)";

(5) by striking out "(c)(1)(B)" in such sentence and inserting in lieu thereof "(d)(1)(B)";

(6) by striking out "(a) and (b)" in subsection (g)(2) (as redesignated by clause (1) of this section) and inserting in lieu thereof "(a), (b), and (c)";

(7) by striking out "subsection (a)(2)" in subsection (h) (as redesignated by clause (1) of this section) and inserting in lieu thereof "subsection (a)(3)"; and

(8) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a)(1) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (h);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under this section.

"(2)(A) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (h).

"(B) The Secretary shall by regulation establish—

"(i) good manufacturing practices for infant formulas, including quality control procedures; and

"(ii) requirements respecting the retention of records,

that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this section and is manufactured in a manner designed to prevent adulteration of the infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health.

"(C) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (B)(i) shall include requirements for—

"(i) the testing, by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for each nutrient required pursuant to subsection (h) prior to the distribution of such batch in accordance with the provisions of subparagraph (D);

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas in order to ensure that such formulas are in compliance with this section;

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health; and

"(iv) the conduct by the manufacturer of an infant formula of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (B)(i).

"(D)(i) At the final product stage, each batch of infant formula shall be tested for Vitamin A, Vitamin B1, Vitamin C, and Vitamin E to ensure that such infant formula is in compliance with the requirements of this section relating to such vitamins.

"(ii) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required pursuant to this section contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(iii) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula pursuant to subsection (h) for which testing has not been conducted pursuant to clause (i) or (ii). Testing under the preceding sentence shall be conducted in order to—

"(I) ensure that each batch of such infant formula is in compliance with the requirements of this section relating to such nutrients; and

"(II) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(iv) For purposes of this section, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(E) The record retention requirements prescribed by the Secretary under clause (ii) of subparagraph (B) shall include requirements for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under clause (i) of such subparagraph, including records containing the results of all testing required under subparagraph (C);

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers;

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis;

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials

used in infant formula powder and in finished infant formula; and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C);

"(v) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under subparagraph (C)(iv); and

"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas.

"(F)(i) Records required under subparagraphs (B)(ii) and (E) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii) of this subparagraph, such records shall be made available to the Secretary for review and duplication upon request of the Secretary, including records and files maintained under clauses (i) through (v) of subparagraph (E) which may reveal the possible existence of a hazard to health.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by subparagraph (C)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(G) In prescribing requirements for audits under subparagraph (C)(iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (h); and

"(B) revise the required level for any nutrient required by subsection (h).

"(4) If pursuant to paragraph (3), the Secretary adds a nutrient to the list of nutrients in the table in subsection (h), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with clause (i), (ii) or (iii) of paragraph (2)(D).

"(b)(1)(A) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(i) such person has, prior to introducting such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula; and

"(ii) such person has at least 90 days prior to marketing such new infant formula, made the submission to the Secretary required by subsection (c)(1).

"(B) For purposes of this section, the term 'new infant formula' includes—

"(i) an infant formula manufactured by a person which has not previously manufactured an infant formula; and

"(ii) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this subparagraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(2) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, prior to the first processing of such formula, make the submission to the Secretary required by subsection (c)(1).

"(c)(1) A person shall, with respect to any infant formula subject to subsection (b), make a submission to the Secretary. Each such submission shall include—

"(A) The quantitative formulation of the infant formula;

"(B) a description of any reformulation of the formula or change in processing of the infant formula;

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (a)(2)(A) and (h), as demonstrated by the testing required under subsection (a)(2)(C); and

"(D) assurances that the processing of the infant formula complies with subsection (a)(2)(B)(i).

"(2) After the first production of an infant formula subject to subsection (b)(1), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsection (a)(2)(A), (a)(2)(B)(i), (a)(2)(C)(i), (a)(2)(C)(iii), and (h).

"(d)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (h); or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(e)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment for such time that the Secretary determines necessary to inform the public of such recall.".

Mr. METZENBAUM. Mr. President, the amendment I have offered is not directly related to the legislation currently pending before the Senate.

My amendment, Mr. President, deals with the quality, the purity and the safety of the baby formula consumed by this Nation's infants.

My colleagues will recall that the Senate voted on this matter earlier in the year—and a full two-thirds of the membership of this body approved my amendment to strengthen the rules governing infant formula production.

That amendment, however, is attached to a piece of legislation that appears to by dying in the House.

I feel so strongly about this issue—particularly since so many of my colleagues have gone on record as supporting a stronger infant formula law—that I am offering another amendment which will have a greater prospect of becoming law.

Mr. President, I ask unanimous consent that a letter from the parent's group "Formula" be printed in the RECORD at this point.

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

FORMULA,
Washington, DC, September 1986.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: We need your support of the proposed amendments to section 412 of the Food, Drug, and Cosmetic Act, relating to requirements for infant formulas. This amendment is similar to a measure which was approved by the Senate in May.

When the Infant Formula Act was signed into law in 1980, it set nutrient standards for all infant formulas, and gave the FDA authority to promulgate quality control regulations.

Why does this law need to be amended now?

The answer is very simple. Defective infant formula can still reach consumers because manufacturers are not required to test each batch of infant formula for all the nutrients specified in the law before it leaves the factory. (See attached list.)

The need to correct this problem was pinpointed by Judge Kenneth H. Starr in his recent opinion before the U.S. Court of Ap-

peals for the District of Columbia Circuit in which he acknowledged that "deficient formula . . . could be on grocery shelves for three months before the required periodic analysis would detect the deficiency." (No. 84-5747, Dec. 31, 1985, p. 32.)

The proposed amendments will:

1. Require manufacturers to test each batch of infant formula for each legally mandated nutrient before the formula leaves the factory.

2. Provide that nutrient levels be routinely tested throughout the product's shelf-life.

3. Require manufacturers to test each batch of formula for hazardous extraneous materials (e.g., heavy metals, carcinogens, pesticides, and other industrial contaminants).

4. Ensure that record retention requirements apply to infant formula powders.

5. Provide for point-of-purchase recall notification.

We believe these amendments will provide protection for our Nation's most precious resource—our children.

We established FORMULA, a national non-profit parents' organization seven years ago when our two children became seriously ill after consuming the defective infant formula Neo-Mull-Soy. Since then, more than 70,000 parents have contacted us.

On behalf of all parents, we strongly urge you to support these infant formula amendments.

Thank you for your consideration in this matter.

Sincerely,

CAROL R. LASKIN.
LYNNE J. PILOT.

Attachment (list of recent problems with infant formulas).

PROBLEMS WITH INFANT FORMULAS SINCE 1982

1. Wyeth. More than 3 million cans of SMA and Nursoy recalled because they lacked vitamin B6. (1982)

2. Abbott-Ross. Similac and Isomil found to contain carcinogens trichlorethylene (TCE) and perchlorethylene (PCE) due to contaminated well water. FDA considers these "weak carcinogens" and does not order a recall. (Food and Chemical News, Nov. 28, 1983.) In July 1985, American Academy of Pediatrics asks for sampling of groundwater, a testing procedure which FORMULA proposed back in 1982.

3. Loma Linda. Soyalac Powder (16 oz. cans) recalled because of a loss of vitamin A activity (August 1983).

4. Filmore Foods. Naturlac (distributed by Sunshine & Rainbow and sold in health food stores) recalled because of a lack of thiamine, copper, and vitamin B6. (Food & Chemical News, Sept. 12, 1983)

5. Scott Treadway (Kama Nutritional). Kama-Mil Powder recalled by Wishing Well Distributing Co. and Threshold Enterprises because product deficient in folacin, zinc, and vitamin D. Class I recall. Product never registered with FDA. Someone notified FDA anonymously. FDA has had difficulty in locating manufacturer. (Food & Chemical News, April 22, 1985)

6. Scott Treadway (Kama Nutritional). Nutra-Milk Powder, recalled by Wishing Well Distributing Co., Threshold Enterprises, and Stowe Mills. Class I recall. Nutrient deficiencies and lack of registration. Manufactured from 1980-1985 without FDA's knowledge. FDA has had difficulty in locating manufacturer. (1985)

7. Gerber Foods. Gerber Meat Base Formula (MBF) recalled because some lots contained excess vitamin A. Gerber had purchased the vitamin premix from Watson Food Company. (Food & Chemical News, Feb. 25, 1985)

8. Ross-Abbott. Three reformulations made without notifying FDA: (a) revision in the concentration of total solids, fat, and protein for Similac with Whey ready-to-feed, (b) revision of the mineral premix used in Similac with Iron and Similac with Whey Plus Iron, and (c) reduction of the protein levels and change in the mineral source for calcium and phosphorus for Isomil ready-to-feed and concentrate. (Food & Chemical News, July 29, 1986)

9. Loma Linda. Soyalac Powder (1.2 oz. foil pouches provided to physicians as samples) recalled because of progressive vitamin A degradation. (FDA enforcement Report, Feb. 12, 1986)

10. Powdered Formulas. There are no provisions for the FDA to examine quality control and production records of powered formulas. Unlike liquid infant formulas, powdered formulas are not covered by existing low acid canned food regulations. According to a Michigan FDA investigator, this situation could result in "serious food borne disease in infant formula powders." (Food & Chemical News, July 9, 1984)

11. Watson Foods Company. The U.S. Department of Justice filed a motion for a preliminary injunction because "as a result of inadequate quality control, numerous Watson vitamin and mineral mixes [used in infant formulas] have been misbranded and adulterated." (Department of Justice Statement, Jan. 2, 1986)

Mr. METZENBAUM. Mr. President, when the Senate approved my earlier amendment on infant formula, the Senator from Utah was in strong opposition to my approach. Since that time, there have been extensive negotiations between my office and Senator HATCH's office—as well as Senator KENNEDY, the FDA, and representatives of the infant formula manufacturers.

The result of those meetings is the amendment I have offered today. I believe it addresses Senator HATCH's concern that we were overregulating the industry and that the earlier proposal was unreasonably burdensome.

While I do not share Senator HATCH's views on the earlier amendment, I have worked with him in a spirit of cooperation in the hope of alleviating his concerns.

Mr. President, this amendment simply sets up quality control testing, good manufacturing practices, recordkeeping requirements, and recall procedures which will prevent our Nation's children from ever again being threatened by defective baby formula.

The most important provision of this amendment is the simple requirement that each batch of formula must be tested for each essential nutrient that must be contained in the formula.

At this point I will take a moment to remind my colleagues of the circumstances which have forced the Senate to act on this matter.

The amendment now pending before us strengthens the Infant Formula Act of 1980, a law which was supposed to ensure that defective and, indeed, life-threatening infant formula would never again reach the grocery shelves.

Many Members of this body will recall that the Infant Formula Act was a bipartisan congressional response to a tragic incident which jolted us into the awareness that we were not doing everything that we could to protect the lives and health of newborn babies.

In 1979, the Syntex Corp., at that time a major manufacturer of baby formula, produced and sold a formula which subjected infants to what was later described as "a unique form of malnutrition."

Twenty thousand babies were exposed to this defective formula. Some died. Some will suffer the formula's harmful effects for the rest of their lives.

So we responded with the Infant Formula Act. During the last days of the Carter administration, FDA wrote regulations to accompany this new law. The regulations were carefully crafted and quite detailed.

Problem solved—case closed, right? Wrong.

Those regulations were never put into effect. A new draft was produced. When the new regulations were unveiled, it was quite apparent that the effectiveness of the Infant Formula Act had been gutted.

Let me quote from an internal memo by an FDA attorney which was uncovered by congressional investigators:

The FDA official called the rewritten regulations "hardly recognizable" and he stated that if a court challenge of the regs were made "the agency [FDA] would probably lose."

The FDA lawyer went on to add that the new regulation "incorporates most changes desired by the industry—it seems very unlikely that any industry group will complain about the current draft."

That's not all. He continued: "Substituting general standards for specific rules has so altered the proposed regulation that the two drafts cannot be meaningfully compared section by section."

So now the new FDA had new regulations that met a curious criteria: Industry groups would not complain.

FDA's redrafted regs said "each manufacturer may establish a (quality control) system that best suits its own needs."

But what about meeting the needs of infants? FDA Commissioner Arthur Hull Hayes, Jr., dismissed those concerns by saying, "We do not believe that the slight additional public health benefit that may be gained by adopting a very detailed rule can be justified in view of the significant additional costs of such a rule."

There you have it. The FDA Commissioner came up with some half-

baked cost-benefit analysis and the babies lost out to the lobbyists.

Where does all this leave us today in terms of the safety of baby formula? In spite of a law which could have kept even a single defective can of formula from reaching consumers, well over 3 million cans of dangerous formula have had to be recalled. Why? Because inadequate testing allowed bad formula to leave the manufacturing facility and end up in our homes.

My amendment, Mr. President, simply sets up the kind of quality control system that we voted for in 1980. It plugs the holes in the current regulations and will make parents secure in the knowledge that the formula they give their babies has been tested and is safe.

Let me demonstrate exactly the kind of risks we are taking, Mr. President. In January and February 1982, Wyeth Laboratories produced an infant formula that contained absolutely no vitamin B6. A mistake was made in the mixture of the formula, but the company's quality control system did not catch it.

According to the FDA:

> Wyeth failed to exercise reasonable supervision to ensure proper handling of raw materials * * * Wyeth allowed poor raw material handling practices to develop and continue without adequate controls thereby creating an environment conducive to errors.

So 4 million bottles of baby formula were produced without vitamin B6—a situation that threatened to "cause serious adverse health consequences or death." FDA said:

> The total absence of vitamin B6 in the diet of an infant for more than a few weeks may cause convulsions and, in more serious instances, brain damage. A vitamin B6 deficiency represents a severe hazard to infants who receive formula as a sole source nutrition.

By accident, Wyeth discovered the B6 problem. But not before 2½ million bottles were distributed nationwide. According to FDA investigators, if Wyeth had not made this "fortuitous discovery, its infant formula products could have had catastrophic consequences."

Mr. President, Wyeth has not been the only manufacturer to produce defective formula since 1980. Companies like Mead Johnson, Abbott Ross, and Gerber have also failed to catch harmful baby formula before it hit the stores.

Mr. President, we worry so much today about tampering of consumer products, and yet we are not doing everything we can to make sure that baby formula is wholesome when it leaves the plant. That's absurd.

In an 1983 incident, another manufacturer of infant formula had private laboratory results confirming that its product was defective. But the company went ahead and authorized the sale of the formula anyway.

And despite the fact that FDA had information that the formula was defective on August 5, 1983, the recall did not get started for over 2 months. Why? Because FDA recall regulations are completely inadequate.

Mr. President, I am certainly not the only one concerned with the current situation. At a conference on infant formula last year, an FDA official noted that a total of five infant formulas had to be recalled in the preceding year, and explained that poor quality control resulted in the marketing of a hazardous infant formula.

He went on to say that FDA is worried because some quality control plans seemed to be poorly organized in an overall sense. This, of course, makes it more difficult for us to make accurate assessments of the job that manufacturers are doing to assure that nutrient requirements are being met.

That statement alone ought to be enough to convince us that we are walking a tightrope with respect to the lives and health of America's infants. The fact that we allow baby formula manufacturers to get away with sloppy safety procedures is absolutely unacceptable.

If we don't do something more to strengthen the regulations of the Infant Formula Act, we will see another infant formula disaster. It's as simple as that.

Why should we wait for another disaster before we are compelled to act? Too often, Mr. President, we find ourselves reacting to a tragedy, rather than acting to prevent a tragedy.

Mr. President, there is simply no margin for error in the production of baby formula. An infant relies on the formula to sustain life and provide the proper nourishment at a time of rapid physical and mental development.

It's time to end FDA's policy of "let the baby beware" and institute the safeguards our children deserve.

The details of this amendment are as follows.

Each batch of formula must be tested for each nutrient required by the law to be present in an infant formula.

This testing can be conducted at any point during the manufacture of the formula, with the exception of tests for vitamin A, vitamin B1, vitamin C and vitamin E. These four vitamins must be tested at the final product stage, for they are vulnerable to degradation before the formula is released for sale.

At any rate, every nutrient—under current law there are 29—must be tested for in each batch of formula before it leaves the factory.

Infant formula manufacturers increasingly rely on the use of formula "premixes" in the production of baby formula. Currently, a premix supplier must only provide a written assurance that its premix products are properly tested.

Although I have no objection to the use of premixes, we have learned through unfortunate experience that this method of certification is woefully inadequate. Earlier this year, the Department of Justice filed a motion for a preliminary injuction against Watson Foods Co., a premix supplier, because "as a result of inadequate quality control numerous Watson vitamin and mineral mixes—used in infant formula—have been misbranded and adulterated."

Therefore, my amendment requires each premix supplier to retain the actual records of analysis upon which they base the certificate they must provide infant formula manufacturers. As a further safeguard, infant formula manufacturers must confirm a premix supplier's guarantee by testing for each nutrient reported to be present in the premix. Additionally, this amendment institutes a second level of verification which will ensure that the premix has been added to the formula in the proper concentration.

This amendment also requires the Secretary of Health and Human Services to develop good manufacturing practices for infant formula production which will further ensure that all formula products will be safe and effective when they leave the factory.

The legislation before us states that the "Secretary shall by regulation establish requirements for quality factors for infant formulas, including quality factor requirements for the nutrients required by subsection (H).

Although this amendment requires the Secretary to establish quality factors, we were informed through the Food and Drug Administration that the state of knowledge and science with respect to quality factors is still evolving. We were informed that for these reasons it is possible to establish appropriate quality factor standards for only one nutrient at present and FDA has already done so. Therefore, it is not possible to require more at this time.

However, we want to leave no doubt that the legislation contemplates that the Secretary will move to promptly develop and promulgate appropriate quality factor standards for different nutrients as the state of the science progresses. We feel these quality factors are important, we expect to see additional factors emerge from time to time, and we expect the Secretary to move forward as quickly as scientific advances will allow.

Manufacturers will also be required to institute in process controls and testing to ensure that each batch of formula is free from poisonous or deleterious substances that would render it injurious to a baby's health.●

This amendment spells out specific requirements for the retention of records regarding the production of infant formula.

While most of these recordkeeping requirements need no explanation, I want to make very clear my intent with respect to the section of this amendment addressing the record retention requirements regarding the microbiological quality and purity of raw materials and the reference to food packaging materials.

This section imposes no new requirements for analysis. It imposes no new procedures. It simply mandates the retention of all records that demonstrate that the law as it stands has been followed regarding raw materials and food packaging materials. Where this amendment changes current quality control standards or tests, it does so explicitly.

I continue to be concerned, however, that our food and drug laws do not differentiate between foods and infant formulas. But they are fundamentally different. An infant formula is designed as the sole source of nutrition for a baby. An infant formula is used daily. A baby must thrive from its contents for the first and most formative months of his or her life.

I expect the Secretary to look closely at whether or not our standards in this area for foods are adequate standards for infant formula. I have no reason at this time to suspect that there is a problem here. But I continue to urge the Secretary to give thorough consideration to the important distinctions between infant formula and other foods, as well as food additives which may be used with infant formulas.

Subsections (b)(1) and (b)(2) require, among other things, that prior to the first processing, in some cases 90 days prior to marketing, manufacturers of infant formula make a submission to the Secretary if the formula is new, or its composition or processing involves changes which might affect the product's safety. Subsection (c)(1) sets forth the contents of the submission: The quantitative formulation of the infant formula; a description of any reformulation or change in processing; assurances that before marketing, the formula will meet the quality factor of nutrient content requirements of the law, as demonstrated by the testing called for in the amendments; and assurances that the formula's processing complies with the good manufacturing practices for infant formulas, including quality control procedures.

Subsection (c)(2) then requires a second submission, confirming the disclosures and assurances in the first, after the first production of the formula and before its introduction into interstate commerce. This second submission is to contain a verification of test results and records demonstrating that the formula and its processing comply with the amendments' requirements for quality factors, nutrient content, good manufacturing practices, vitamin, and batch testing.

Under the testing and good manufacturing requirements of this amendment, the manufacturer will be routinely sampling and testing the formula, checking procedures and environmental parameters, and so forth. These steps will generate test and quality control records, the results of which will then be furnished to FDA prior to first placing the formula in interstate commerce. Thus, FDA will have in its possession tangible evidence that the nutrient checklist and other requirements of the infant formula law have been complied with.

My colleagues will recall that when my earlier amendment was approved by the Senate, it contained a provision which would have required a premarket approval by the Secretary for new or altered formulas. The FDA has since made a strong case that a premarket approval is not desirable in this instance. FDA points out that the burden to produce a safe and effective formula should remain squarely on the shoulders of the manufacturer.

On this point, I agree with the FDA. These submissions will provide FDA with the vital production information that it needs.

The sponsors of this amendment are aware that the good manufacturing practices and quality control procedures now in effect and to be promulgated under these amendments contain a variety of requirements. Some specify actual manufacturing process steps or conditions; for example, sterile handling procedures, and the failure to follow these requirements, may jeopardize the integrity of the infant formula. Other requirements are more administrative or record related; for example, initialing a form, and may not pose the same kind of risk is violated.

It is not our intent that formula be deemed adulterated or that the submission requirement of subsection (b)(2) or the notification requirement of subsection (d)(1) be triggered by violations such as clerical lapses, unless of course they are of such nature as may affect the quality or content of the formula. We fully recognize that some recordkeeping or other clerical violations may indeed affect the formula. We are, therefore, directing the Secretary to establish regulations or guidelines distinguishing the one variety of violation from the other for the purposes of this amendment.

We also note that, even where such violations are purely technical and without public health significance, the Secretary would retain current authority to find a violation of the good manufacturing practices or quality control procedures and to take appropriate action.

We also observe that the submission requirement of subsection (b)(2) should apply in any event to deliberate changes in processing rather than to unintended departures from good manufacturing practices or the quality control requirements, which will instead be handled as violations.

Additionally, this amendment strengthens the recall procedures for infant formulas, should a defective formula somehow make its way to the marketplace. Included in those recall procedures is a requirement for the posting of a notice of the recall at the point of purchase to better inform consumers who may otherwise be unaware of any problems with a defective formula.

Mr. President, a newborn baby is totally reliant on his or her parents to survive in this world. Obviously, breastfeeding is the most desirable method for the baby. But some mothers are not able to nurse their newborns, for a variety of reasons.

These mothers use infant formulas to nourish their babies. Mr. President, we have a responsibility to those mothers, to those new fathers, and most of all to those new babies to ensure that the formula purchased from the grocery shelves provides the nutrition that the law requires.

Today, we are not fulfilling that obligation. With the adoption of these strengthening amendments, Mr. President, we will finally realize the goals of the Infant Formula Act of 1980—to prevent a single can of infant formula from damaging a single infant.

Mr. President, this amendment is not a new subject for this body. This amendment is the amendment having to do with infant formula. We passed it on a vote of 60-some-odd to 30 previously.

At that time the distinguished Senator from Utah was in the opposition. I know tonight he is prepared to look favorably upon the amendment.

I yield the floor to him.

Mr. HATCH. Mr. President, I responded to the amendment of the Senator from Ohio with mixed feelings.

I discussed it with him. We worked together on it for a number of weeks. He has always been ready to consider my response and consider my desire for a practical piece of legislation.

The amendment he offers today would add a new requirement to the law regulating to the manufacture of infant formula.

It is a far better amendment than the one adopted when we passed the drug export bill. So I am going to support him on it and ask to be a cosponsor of the amendment, and I believe this amendment has been cleared by both sides and recommend its passage.

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Mr. HATCH. I would like to clarify a couple of points on my friend's infant formula amendment proposal, which Senator KENNEDY and I have worked on with him. We agree there should be regulations or guidelines for subsection (b)(2) and particularly (d)(1). Anytime an infant formula product fails to include a required nutrient or contains a required nutrient at a level substantially above or below the Secretary's maximum or minimum requirements, a recall would clearly be in order. Similarly, the presence of any substance at levels that would render the product adulterated and likely to cause injury would also be a case where a recall should be required. We didn't feel that notification or recalls should be required in all cases which might constitute a technical adulteration or misbranding, but, rather, felt that an actual rather than theoretical risk to human health must exist before a recall would be required. In brief, it seems to me that whenever use of a product is likely to cause harm in the short term because of an adulteration or misbranding situation it should be recalled.

On the other hand, there are instances where violations may have occurred, but short-term or even long-term use of the product would not be likely to result in any risk to human health. Examples of such situations would be typographical errors on labels, only minor and insignificant deviations from the required nutrient tables. Minor deviations from good manufacturing practices or quality control procedures would not result in a mandatory recall unless a specific health hazard could be demonstrated.

I also agree with the FDA that premarket approval is not desirable in this instance and understand that this procedure is not intended to become a precursor of such FDA action.

Mr. METZENBAUM. Mr. President, the struggle to strengthen our infant formula law has been a long one, and a few people should be singled out for their work in this effort.

Carol Laskin and Lynne Pilot of the parent's group "Formula" have given of themselves for the past 6 years to make infant formula safe and wholesome for every baby in America who relies on it for nourishment.

Alan Laskin and Larry Pilot, their husbands, have been instrumental in crafting this piece of legislation. Their guidance and experience has been of invaluable assistance on this issue.

I also want to express my gratitude to Kathy Meyer of public citizen's litigation group. Without Kathy's years of work and commitment to this matter, this amendment could never have been adopted by the Senate.

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

Mr. METZENBAUM. May we have action?

Mr. THURMOND. Mr. President, we have accepted the amendment.

AMENDMENT NO. 3071

(Purpose: To help prevent rape and other sexual violence by prohibiting dial-a-porn operations)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3071 to amendment numbered 3070.

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

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

The amendment is as follows:

At an appropriate place in the pending amendment, add the following:

"SEC. —. Section 223(b) of the Communications Act of 1934 is amended—

(1) in paragraph (1)(A), by striking out 'under eighteen years of age or to any other person without that person's consent';

(2) by striking out paragraph (2);

(3) in paragraph (4), by striking out 'paragraphs (1) and (3)' and inserting in lieu thereof 'paragraphs (1) and (2)'; and

(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.".

Mr. HELMS. Mr. President, the purpose of this amendment is to eliminate completely the so-called "dial-a-porn" operations by repealing a few words in section 223(b) of the Communications Act of 1934. The amendment adds no substantive language of any kind to current law; it—purely and simply—removes a gaping loophole in existing law.

Mr. President, American parents have enough to contend with in 1986 without having to worry about whether their children will be able to pick up the phone, dial a number, and then hear an obscene recorded message. Yet, since Congress first addressed the problem of dial-a-porn in December 1983, the dial-a-porn industry has flourished, and our children in particular and American society in general have been the losers.

The loophole in existing law is that it affirmatively authorizes dial-a-porn for consenting adults. Thus, dial-a-porn operators are given a green light to go into business, and then the practical problem arises as to how to keep children from calling the dial-a-porn numbers. That practical problem, Mr. President, has proven to be totally insoluble. Moreover, there is no good reason for Congress to authorize our interstate telephone system to be used for the communication of pornographic messages—even to adults.

Mr. President, the prohibitions currently in place under section 223(b) of the Communications Act of 1934 are sufficient to shut down the dial-a-porn industry, if we simply eliminate the loophole. The loophole has two parts.

The first part of the loophole is that portion of section 223(b)(1)(A) which makes dial-a-porn criminal only if it goes to a person under 18 years of age or to a person who has not consented to receiving the message. My amendment eliminates this crippling qualification to the prohibition against dial-a-porn. Thus, the prohibition against dial-a-porn would apply to everyone—not just minors and nonconsenting adults as is currently the case.

The second part of the loophole is all of section 223(b)(2) which provides: "It is a defense to a prosecution under this section that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with procedures which the Commission (the FCC) shall prescribe by regulation." My amendment would remove this complete, affirmative defense to prosecution under section 223(b), and it would make the current penalties for dial-a-porn under section 223(b) meaningful for the first time.

Mr. President, many constituents have contacted me on this problem of dial-a-porn. Most recently I received a letter from the father of a 9-year-old boy. The father sent me a copy of his telephone bill and underlined three long distance calls to a "900" number. "While questioning my son about these calls," the father wrote, "I discovered that the long distance calls were placed to a service which provides sexually explicit messages. Apparently, some older children told my son that this number was the number of 'Teddy Ruxpin', the talking teddy bear. The joke was not very funny when one considers the fact that the morals of young children are being corrupted in the process."

Mr. President, the need for this legislation, I believe, is completely evident in this father's letter. We in Congress owe the parents of America better than what they now have to contend with on this matter of dial-a-porn. I urge adoption of this amendment.

Mr. DENTON. Mr. President, I rise in stong support of the amendment offered by my distinguished colleague from North Carolina, JESSE HELMS, which will close the gaping loophole in the existing law dealing with "dial-a-porn."

Mr. President, pornography attacks human dignity at its very core. It is an epidemic that devastates the personal and social well-being of contemporary society. We must remain alert to its effects and take countermeasures to prevent its spread. Pornography encourags the sexual exploitation and abuse of men, and women and children, with tragic consequences.

Testimony received in the Judiciary Subcommittee on Juvenile Justice indicates beyond a doubt the effects of pornography are devastating, both to the individual and to society. The sex industry abuses and exploits not only those who engage in making it, and those who are exposed to it, but also those who are victimized by its effects on other people. It uses every means of social communication: books, magazines, tabloids, films, video cassettes, subscription television, video games, coin-operated machines, and more recently erotic telephone messages.

The crass commercial exploitation of human sexuality by the multi-billion-dollar pornography business is an affront to every individual and to every community that strives to maintain a decent society and to protect its citizens and their fundamental freedoms.

Innovations in the methods of distributing pornography, particularly in the area of interstate telephone service, make it imperative that Congress act effectively.

The ease with which children may obtain access to pornography via the "Dial-It" sex services, is well documented. In my own State of Alabama, a news article appearing in the Montgomery Advertiser and Journal, on June 5, 1983, listed story after story of how children as young as 6 years old have been indiscriminantly exposed to pornographic messages and images through dial-a-porn services, against the will of and without the consent of their parents. This problem continues unabated. In view of the seriousness of the factors involved, the present abdication of Government supervision over the public channels of communications cannot be justified.

Mr. President, this amendment will remove the loophole from the existing law dealing with "dial-a-porn" which allows dial-a-porn operators to go into business serving consenting adults before addressing the practical problem of preventing children from using the dial-a-porn numbers.

Mr. President, the current prohibitions are sufficient to eliminate the dial-a-porn industry, if the current loophole is eliminated. The loophole has two parts.

First, that portion of section 223(b)(1)(A) of the Communications Act of 1934 which makes dial-a-porn criminal only if it goes to a person under 18 years of age or to a person who has not consented to receiving the message creates a loophole. This amendment would eliminate the crippling qualification to the prohibition against dial-a-porn. Thus, the prohibition against dial-a-porn would apply equally to everyone—not just minors and nonconsenting adults as is currently the case.

Second, a loophole is found in section 223(b)(2) of the Communications Act of 1934 which provides: "It is a defense to a prosecution under this section that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with procedures which the Commission (the FCC) shall prescribe by regulation." This amendment would remove the complete, affirmative defense to prosecution under section 223(b), and it would make the current penalties for dial-a-porn under section 223(b) meaningful for the first time.

Mr. President, the need for this amendment is clear if we are to continue to fight the evils of pornography.

I urge my collegues to support the amendment.

Thank you, Mr. President.

Mr. METZENBAUM. Mr. President, will the Senator from North Carolina be good enough to yield for a question?

Mr. HELMS. Yes.

Mr. METZENBAUM. Is this the amendment that would impose a penalty on those who use telephones to sell obscene or indecent messages to individuals under 18 or nonconsenting adults? Is that the thrust of the amendment?

Mr. HELMS. That is it, yes.

Mr. METZENBAUM. Would the Senator from North Carolina consider our accepting the amendment and eliminating the word "indecent"?

Let me explain the reason I raise the question.

Constitutionally the Senator is fully protected in this amendment with respect to the limitation on obscene telephone calls.

Mr. HELMS. Will the Senator withhold? I cannot hear.

Mr. METZENBAUM. I am sorry.

Mr. HELMS. I am sorry.

Mr. METZENBAUM. What I am suggesting to the Senator from North Carolina is the possibility that he would be willing to eliminate the word "indecent" from his amendment keeping in the language about the obscenity to sell obscene messages to individuals.

I say that because he and I are not in disagreement on the thrust of the amendment, but my concern is and I think it would be his as well that when you had a phrase such as "indecent" which is not easily subject to definition, I believe the amendment would be unconstitutional.

I believe that it would be totally constitutional to ban the selling of obscene messages to individuals, and with that I do not think he would be in disagreement.

I think that the Senator would achieve the objective which he seeks and which I am prepared to join him in.

So all it would mean that the selling of obscene messages would be the law but the language "indecent" would be eliminated and frankly that is pretty hard to define.

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

Mr. METZENBAUM. Certainly.

Mr. HELMS. My problem with the Senator's suggestion and I wish I could accept it, but I cannot, is that "indecent" is already in the current law, the word.

Mr. METZENBAUM. That is correct. But then when the Senator adds his language to it according to the best constitutional advice I have had that creates the constitutional problem. The courts have already recognized on a number of occasions the right to ban obscenity and no constitutional protection with respect to obscenity. With respect to the indecent language the courts have somewhat indicated that that would be unconstitutional.

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Mr. HELMS. I will level with the Senator. I will take my chances on the court doing anything about this amendment. I do not think the court will. I thank the Senator for his offer, but I cannot accept it.

Mr. President, I am not a lawyer—which may be one reason why the people of North Carolina reelected me in 1984.

But it does not take any great wisdom to see that lawyers and Federal judges have made a shambles of the traditional laws in our country banning obscene and indecent material. These laws were reasonable and had a long and honorable history. They kept at bay certain vile and base instincts of our fallen human nature for the good of individuals and society alike. Through these laws, decency and modesty and sound family life were promoted.

Today, however, these laws have been undercut by a patchwork guilt of confused and confusing Federal court rulings. From what legal scholars tell me—and I mean genuine legal scholars, not liberal activists temporarily parked in academe—there is probably no area of constitutional law more removed from the text and history of the Constitution than the Federal case law on obscenity. The principles used by judges are constantly changing, the reach of Federal jurisdiction is always expanding, and the results in any given case are usually unpredictable.

Mr. President, the precedents of the Supreme Court and other Federal courts on the subject of obscenity are more properly labeled constitutional chaos than constitutional law. The fact is that the first amendment and antiobscenity laws existed side by side, without serious conflict, for all of American history until the second half of this century.

Then, still having the same old Constitution but imbued with a new liber-

al ideology, the Supreme Court started hacking away at traditional laws against smut. In short, the libertines of the ACLU combined with usurpers on the Federal bench to repeal decency in this country—all under the guise of constitutional law.

Discovered for the first time in the history of the Constitution were elaborate and technical tests which anti-porn laws had to pass before they could be enforced. Not surprisingly, few laws could pass this new extra-constitutional muster. The philosopher-kings had finally arrived in America, and they sat in black robes on Federal court benches armed with new, radical ideas about the Constitution.

Where in the midst of all of this were those intrepid watchdogs of adversary journalism—the major news media? Did they expose and object to this distortion of the Constitution and its adverse impact on American society? Unfortunately not. They were too busy genuflecting at the throne of this new source of liberal power. The major news media, when it came to Federal judges' undercutting obscenity laws, proved to be more lapdogs than watchdogs.

The results in 1986, Mr. President, are plain to see. The United States of America is now a society satiated with obscene, indecent, and pornographic materials. Not only are they available everywhere in the public domain, but thanks to a dial-a-porn industry not even 5 years old, they are even available over the telephone in every home in America.

Mr. President, the patriots of the American revolution and the framers of the Constitution did not sacrifice their lives, their fortunes, and their sacred honor so that a coterie of dial-a-porn operators could become millionaires in the 20th century. Our forebears had higher ideals in mind. The great principles of freedom they put in the Constitution were meant to serve the common good, not the prurient interest.

In this Senator's opinion, the Constitution does not force Congress to sanction a dial-a-porn industry which corrupts the morals of children and pollutes the minds of adults. The Constitution is not a death wish reduced to writing. It does not require us to commit cultural suicide by tolerating vice and the cultivation of vice for profit.

Even a nonlawyer can see that the whole tenor and purpose of the Constitution is to uphold the principles of life, liberty, justice, decency, and honor. We in Congress are therefore obliged, by the Constitution itself, to suppress as far as possible the trade in human degradation otherwise known as the pornography business. We owe this effort not only to our forefathers but also to our grandchildren.

The question today, Mr. President, is not whether my amendment is unconstitutional—it clearly violates no provision of the Constitution—but whether we in Congress have the courage to stand up against the porn kings and smut peddlers and stand up for the American people and public morality. I urge the adption of this amendment.

Mr. President, I have received a letter and legal memorandum on the issue of the constitutionality of my amendment from Bruce A. Taylor, general counsel of Citizens for Decency Through Law, in Scottsdale, AZ. These materials are persuasive, scholarly, and well done, and I ask unanimous consent that they be printed in the RECORD.

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

CITIZENS FOR DECENCY
THROUGH LAW, INC.,
Scottsdale, AZ, April 15, 1986.

Hon. JESSE HELMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HELMS: Our legal staff has reviewed your proposal to amend Section 223(b) of the Communications Act of 1934 and we are of the opinion that it is totally within constitutional limits and will be upheld by the U.S. Supreme Court if passed. Your bill, as well as H.R. 4439, would merely correct the statute to be consistent with the law as it existed for fifty years prior to its amendment in 1983. The First Amendment does not protect the mass availability of "indecent" material by telephone, even among "consenting adults," and Section 223 can and must be changed to include "indecent" dial-porn commerce.

When Congress was considering the amendments to Section 223 in 1983, it was reacting to the F.C.C. position, followed by the courts, that interpreted the "old" Section 223 to apply only to "makers" of harassing phone calls which are obscene or indecent. The F.C.C., we think, took too restrictive a position on the legislative history and intent of Congress and could have interpreted the law to cover commercial dial-porn services, as the courts and F.C.C. did in construing 18 U.S.C. 1464 to prohibit indecent television as a form of "radio communication." However, the F.C.C. has not stated that the law could not have regulated indecent dial-porn, only that it did not cover this new technology as enacted fifty years before. The issue is more political than legal or constitutional. The F.C.C. and its Chairman are philosphically oriented, and with it their "Legal opinions," away from their mandated function of law enforcement and industry regulation for the public good and in favor of a laissez faire attitude toward the commercial interests of the "regulated" private business interests. The Supreme Court has not required the legalization of obscenity and indecency over phone, cable, and satellite. In fact, it was an erroneous legal interpretation of the existing law which caused Congress to legalize obscene and indecent phone services unless they knowingly went to children or unconsenting adults. That 1983 dial-porn amendment was the first and only time in the 200 year history of the country that Congress legalized any form of obscenity. The 1983 amendment should only have made the technical changes needed to apply the law to the caller and the provider. The changes instead adopted the recommendations originally conceived by the pornography industry and echoed by the 1970 President's Commission on Pornography, recommendations which were rejected by the Senate in 1970 with only 5 votes in their favor. The 1983 law, in effect, criminalized only the knowing provision of "indecent" calls to children, thereby legalizing them for adults and allowing the messages to be available openly to any phone in the world. Congress also required the F.C.C. to fashion a defense for potential defendants who violate the law and provide the service to children. The F.C.C. first refused to adopt rules which would protect children. After its first attempt to provide the dial-porn industry a defense was struck down by the courts as useless in protecting children, the F.C.C. announced a second set set of rules which are now in litigation. The second guidelines require credit cards or access codes, but these will not protect children, they still legalize obscenity and indecency in mass communications, and they will be hard to defend in light of the F.C.C.'s previous position which rejected such measures in its first regulations.

It is clear, therefore, that only Congress can correct the legal, social, and ethical disaster created by the 1983 amendments to Section 223. In the past two years, the courts have prevented the phone companies from cutting the services, prevented local prosecution under state laws, dismissed the federal prosecution under the "old 223" and even under other federal obscenity statues, and the "new 223" has been unenforced by agreement of the F.C.C. and the Department of Justice. Meanwhile dial-porn grosses millions in illegal profits for pimps and pornographers whose only business purpose is to violate the law. Congress has made it possible for children to get dial-porn and for this industry to grow rich and powerful. Only Congress can cure this national disgrace.

If your bill or Representative Bliley's bill passes, then commercial services will no longer provide "indecent" messages over the telephone system. The Supreme Court's precedent will support such a law, as it would have before 1983. In 1978, the Court held that federal law and the F.C.C. could prohibit "indecency", such as George Carlin's "7 dirty words", over radio. The Court said mass communications need not be limited to the obscenity standard, as are "adult" theatres and bookstores. There is no technical distinction or legal principle that would protect telephone indecency more than radio or television indecency. Telephone systems are no less "mass communication" facilities, are no less pervasive, no less available to children, and the reasoning and opinion of the Supreme Court in *F.C.C. v. Pacifica* is as much or more on point in regard to modern day dial-porn.

CDL's legal staff, Ben Bull, Paul McCommon and I, are involved in lawsuits brought by the dial-porn company and expect to continue to do research and litigation in this area of law. I fully expect that the courts would uphold the "indecency" restrictions and I have included a leal memorandum drafted by my collegues in support of this opinion.

Respectfully submitted,
BRUCE A. TAYLOR,
General Counsel.

CITIZENS FOR DECENCY
THROUGH LAW, INC.,
Scottsdale, AZ.

MEMORANDUM OF LAW IN SUPPORT OF H.R. 4439

This legislation proposes to amend Section 223 of the Communications Act of 1934 (47 U.S.C. § 223), and as amended will prohibit obscene and indecent communications by means of telephone to any person, regardless of age. It is the purpose of this memorandum of law to demonstrate the need for this legislation, and to provide supporting legal authority for its enactment.

I. THE HISTORY OF DIAL-A-PORN AND THE FAILURE OF PREVIOUS LEGISLATIVE EFFORTS.

* * * * *

On May 24, 1985, any child in Northern Arizona could hear the above message by dialing "1-976-2727." Other messages similarly available contain graphic descriptions of incest, bondage, and sex with animals. Attorneys representing this industry are admitting that dial-a-porn is openly available to children, but according to them:

The exposure of this material to children is the price we must pay for a free society.

In every major city across this country, dial-a-porn telephone services became readily accessible to children by mid-1985, with federal and state law enforcement agencies apparently unable or unwilling to stop it.

This dial-a-porn "industry" is still in its infancy, dating back to March of 1983. Yet, in less than three years, it has grown from only one service operating nationally from its New York headquarters, to many services operating in every major city. The messages continue to become more sexually explicit and deviant in their content.

When dial-a-porn first became available in March 1983, it should have been prosecuted under already existing federal law. 47 U.S.C. Section 223 of the Federal Code then provided: "(a) Whoever—(1) in the District of Columbia or in interstate or foreign communication by means of telephone—(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent . . . shall be fined not more than $500 or imprisoned not more than six months or both." Section 223, by its plain meaning, should have been used by the FCC and the Department of Justice (DOJ) to control dial-a-porn services. However, throughout 1983, the FCC and DOJ issued letters to one another and to the general public creating every possible excuse as to why Section 223 could not be enforced.

The FCC went on record as ruling: "Section 223(1)(A) applies only to persons who utter obscene or indecent words during calls they place." "Second Report and Order," Gen. Docket No. 83-989 (Oct. 16, 1985). According to the FCC, since dial-a-porn dealers did not "place" the calls, Section 223 did not apply to them. This restrictive and erroneous interpretation given Section 223 by the FCC resulted in a lack of legal action taken against dial-a-porn during its first year of operation. The FCC refused to take administrative action, and the DOJ refused to take criminal or civil court action. Such lack of prosecution allowed the services to flourish. Meanwhile, the content of the messages became far more sexually explicit, moving from merely "indecent" suggestive language, to language which clearly fell within the restrictions of both state and federal obscenity legislation.

Congress became frustrated at the lack of legal action taken against dial-a-porn and, in late 1983, amended Section 223, making it a crime to make "any obscene or indecent communication for commercial purposes to any person under 18 years of age or to any other person without that person's consent." 47 U.S.C. Section 223(b)(1)(A). In so amending Section 223, Congress "legalized" dial-a-porn. For the first time in the history of this country, obscene material was de-criminalized for "consenting adults." This legalization of obscene dial-a-porn messages for consenting adults directly violated legal precedent as established by the Supreme Court in cases such as *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973), which rejected the "consenting adults" defense.

In amending 223, Congress further provided that the FCC was to issue regulations which would deny access to dial-a-porn services to persons under 18 years of age. Compliance with these regulations would be a complete defense to liability under Section 223. In other words, even if a minor breaks through the restrictions and calls dial-a-porn, the dealer, having complied with FCC regulations, cannot be prosecuted.

Attempts by the FCC to issue regulations pursuant to § 223(b)(2) have been totally unsuccessful, and it is now clear that no regulations from the FCC will adequately protect children from these dial-a-porn services. The first set of FCC regulations, issued in 1984, were struck down as unconstitutional by the Second Circuit Court of Appeals. *Carlin Communications, Inc. v. FCC*, 749 F.2d 113 (2nd Cir. 1984). A second set of FCC regulations, issued on October 16, 1985, are presently pending before the Second Circuit Court. Even if the second set of regulations is upheld by the Second Circuit, it is clear that the regulations will be ineffective—the "access code" requirement was rejected by the FCC as unworkable before they issued their 1984 regulations.

The above described history reveals two major flaws in the 1983 amendments to Section 223 which have resulted in the failure to control dial-a-porn. First of all, legalizing dial-a-porn for "consenting adults" was contrary to the decisions of the U.S. Supreme Court and placed Section 223 in conflict with all other federal obscenity statutes. Consequently, the legalization of dial-a-porn assured that it would always be accessible to children. The second major flaw in the 1983 legislation was to give the FCC the power to issue defenses to liability under § 223(b)(2)—the FCC has demonstrated its inability to issue workable regulations that will protect children.

Finally, as a result of the 1983 legislation and of the indecision by the FCC on this matter, the courts and the law enforcement community are in a state of confusion concerning the control and/or prosecution of dial-a-porn distributors. At the present time, federal prosecutors will not prosecute the distributors of obscene dial-a-porn messages, even where they have been made blatantly available to children. The reason for this lack of federal enforcement is the belief that dial-a-porn distributors can only be prosecuted under § 223(b) and under none of the other federal obscenity laws.[1] State law enforcement authorities will not prosecute because of the confusion in the federal arena, fear of legal action by the dial-a-porn industry against state officials, and a mistaken belief that the FCC has preempted this field of law. At the writing of this memorandum, there are no federal or state criminal cases pending against dial-a-porn distributors—they are operating freely, sensing a complete immunity from prosecution.

II. THE PROPOSED AMENDMENT TO 47 U.S.C. § 223 DOES NOT VIOLATE DIAL-A-PORN RECIPIENT'S RIGHT TO PRIVACY OR RIGHT TO ACCESS

The first objection that may be leveled at this legislation is that it violates a customer's right to receive dial-a-porn messages. As will be shown, this criticism is without merit. It is well settled that obscenity, in whatever form, is not protected by the First Amendment. *Miller v. California*, 413 U.S. 15 (1973); *Kaplan v. California*, 413 U.S. 115 (1973). Hence, the states and federal government may lawfully prohibit its commercial distribution, whether telephonically or through other media. *Id.* The Supreme Court has made clear that the "mere private possession of obscene material" in the home cannot be made a crime. *Stanley v. Georgia*, 394 U.S. 557 (1967). However, there is no correlative right to purchase obscenity in the public marketplace or to have it distributed to your house through channels of public commerce.

In *United States* v. *12 200-ft Reels*, 413 U.S. 123 (1973), the Court held that the "right to possess obscene material in the privacy of one's home does not give rise to a correlative right to have someone sell or give it to others." 413 U.S. at 128. In so holding, the Court ruled that Stanley is to be viewed as "explicitly narrow and precisely delineated." 413 U.S. at 127. "We are not disposed to extend the precise, carefully limited holding of *Stanley*. . . ." 413 U.S. at 128. Indeed, the Court has squarely held that there is no right to "receive it" in "the privacy of the home." *United States* v. *Orito*, 413 U.S. 139, 141 (1973) (emphasis added). In *Orito*, the Court further held that there is no right to use "common carriers in interstate commerce" (such as the telephone company) for delivery of obscene material to the home. 413 U.S. at 142. *See also, United States* v. *Reidel*, 402 U.S. 351, 353-54 (1971) (there is *no* right to deliver obscene material for use in the home.)

Furthermore, the Supreme Court in *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), held, *inter alia*, that radio and television do not have the right to "broadcast" "indecent" material into the home. The Court rejected the contention that an individual has a right of access in the privacy of his home to "indecent" radio or television broadcasts. The Court reasoned that such broadcasts are "uniquely accessible to children" and "that the governments interest in the 'well-being of its youth' justified the regulation of otherwise protected speech." 438 U.S. at 749. This government interest in the "well-being of its youth" and the "accessibil[ity] to children" are similarly present, and are triggered, upon the transmission of "indecent" or "obscene" dial-a-porn into the home. As the Court stated: "[T]he ease with which children may obtain access. . . , coupled with the concerns [for children] recognized in *Ginsberg*, amply justify special treatment of indecent" material. 438 U.S. at 250.

Assuming *arguendo* that exposure of dial-a-porn to children can be prevented, the Su-

[1] Federal criminal charges were dismissed last year in Utah, where numerous children had been exposed to the dial-a-porn services. Because § 223(b) is in a state of confusion, the U.S. Attorney attempted to prosecute Carlin Communications and others for violations of other federal obscenity laws. However, the Judge dismissed the indictments, ruling that violations could only be prosecuted under § 223(b). *U.S. v. Carlin Communications, Inc., et al.*, No. CR-85-00086G (D. Utah 1985).

preme Court has rejected the contention that the distribution or transmission of obscene materials between consenting adults is constitutionally sanctioned. In *Paris Adult Theatre I* v. *Slaton*, 413 U.S. 49 (1973), the Court held that notwithstanding lack of exposure to children, the distribution of obscene material between consenting adults coud be regulated:

We categorically disapprove the theory . . . that obscene, pornographic films acquire constitutional immunity from state regulation simply because they are exhibited for consenting adults only. . . . [W]e hold that there are legitimate state interests at stake in stemming the tide of commercialized obscenity, even assuming it is feasible to enforce effective safeguards against exposure to juveniles and to passers-by. Rights and interests other than those of the advocates are involved.—413 U.S. at 57.

This holding squarely does away with any contention that "consenting adults" have a right to transmit or receive obscene dial-a-porn. It should again be stressed, however, that many dial-a-porn distributors have openly made their "product" available to children and have refused to acknowledge any responsibility for excluding children's access.

The products of the dial-a-porn industry are clearly not protected by a constitutional right of privacy. These messages are being publicly distributed and have become openly available to children through channels of public commerce. Because of the complete public and commercial nature of this dial-a-porn industry, regulation under Section 223 is clearly permissible.

III. THE FEDERAL GOVERNMENT MAY LAWFULLY PROHIBIT THE TRANSMISSION OF OBSCENE AND INDECENT DIAL-A-PORN.

A. Obscene Dial-A-Porn

Without question, obscene speech is not protected by the First Amendment. *Brockett v. Spokane Arcades, Inc.*, 472 U.S.—, 86 L.Ed.2d 394, 105 S.Ct.— (1985); *Miller v. California*, 413 U.S. 15 (1973). Hence, the government may lawfully prohibit its distribution, whether telephonically or through other media. *Kaplan v. California*, 413 U.S. 115 (1973). *See also, United States v. Lampley*, 573 F.2d 783, 50 A.L.R. Fed. 525 (3rd Cir. 1987) (upholding constitutionality of 47 U.S.C. § 223). This issue is so well settled that there has been no serious claim to date that the Congress may not constitutionally prohibit "obscene" dial-a-porn.

B. Indecent Dial-A-Porn

The more frequently repeated assertion is that Congress may not legislate against "indecent" dial-a-porn. This assertion is erroneous and ignores sound legal precedents permitting the use of the "indecency" standard for the telephone medium. These precedents and authority are set forth herein.

In its landmark case of *F.C.C. v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court defined the word "indecent" as "nonconformance with accepted standards of morality." It is a "shorthand term for patent offensiveness." *Id.*, at 470 n. 15. This definition obviously does not coincide with the three-part definition of "obscenity" found in *Miller v. California*. Yet, the Supreme Court has never limited government restrictions on speech to the obscenity standard.[2] For example, the Court has upheld restrictions on all of the following types of speech: false advertising, speaking a prayer in a public school, libel, slander, speaking words which amount to a conspiracy or an obstruction of justice, sedition, yelling fire in a crowded theatre, using words which constitute offering a bribe, words that threaten social harm because they advocate illegal acts, words (from a loudspeaker) at 3:00 a.m. in a residential neighborhood, speaking in contempt of court, committing perjury under oath, television cigarette advertisements, saying words which have been classified (e.g., secret) by the government, copyright violations, pretrial publicity which might interfere with a defendant's opportunity to secure a fair trial, U.S. government employees engaging in political speech (Hatch Act), sexually explicit material which is harmful to minors, non-obscene sexually explicit movies shown in violation of a zoning ordinance, child pornography, and finally, "indecent" speech.[3] Thus, the broad contention that government restrictions on expression are limited to the obscenity standard are quite incorrect. Regulation of sexually-oriented expression has by no means been limited to that standard, although the degree of permissible regulation has varied with the circumstances.

The application of the "indecency" standard to dial-a-porn is supported by the Supreme Court's analysis of the First Amendment, which accords some varieties of speech (e.g., "indecent" speech) less protection than others.[4] The Supreme Court's rulings that certain types of expression are entitled to little or no protection under the First Amendment find their modern beginnings with *Chaplinski v. New Hampshire*, 315 U.S. 568 (1942), where the Court upheld a "fighting words" statute under which Chaplinski had been convicted for calling a policeman "a God damned racketeer" and a "damned fascist." *Id.* at 569. Justice Murphy's rationale for upholding the statute against a First Amendment attack is set forth in the following excerpt from the opinion:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.—*Id.* at 571-72.

The Supreme Court has embraced the position that differing degrees of protection are afforded different classes of speech.

Speech protected in some contexts may in others be so harmful, or of so little value, that it can be regulated because the harm to society outweights the expressive interests. Thus, First Amendment protection "often depends on the content of the speech." *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 66 (1976). Furthermore, as Justice Stevens has stated, "the First Amendment affords some forms of speech more protecton from governmental regulation that other forms of speech," *New York v. Ferber*, 102 S. Ct. 3348, 3367 (1982) (Stevens, J. concurring), and the *context* of speech may determine whether or not it is protected. *F.C.C. v. Pacifica Foundation, supra, at 747-48 (1978). The Court has allowed government regulation of non-obscene speech, based upon subject matter and context, in numerous cases. See, Rowan v. Post Office Department*, 397 U.S. 728 (1970) (banning erotic material from the mails at recipient request); *C.B.S. v. Democratic National Committee*, 412 U.S. 94 (1973) (upholding network refusal to accept commercial advertising); *Lehman v. Shaker Heights*, 418 U.S. 298 (1974) (Upholding policy of accepting commercial advertising but refusing political advertisements on city-owned bus line); *Greer v. Spock*, 424 U.S. 828 (1976) (barring political speakers from a military base); *Jones v. North Carolina Prisoners Union*, 433 U.S. 119 (1977) (banning in-prison solicitation of membership in a prisoners union); *Young v. American Mini Theatres, supra*, and *Renton v. Playtime Theatres, Inc.*, — U.S.—, 89 L.Ed.2d 29, 106 S.Ct.—(1986) (placing zoning restrictions on the location of adult theatres); *F.C.C. v. Pacifica, supra*, (prohibiting radio broadcast of *indecent* programming); *Board of Education v. Pico*, 457 U.S. 853 (1982) (certain books may be removed from a high school library because of their vulgarity); *New York v. Ferber, supra*, (banning non-obscene sexually explicit depictions of minors); *Ginsberg v. New York*, 390 U.S.C. 629 (1968) (banning distribution to minors on non-obscene material which is "harmful to minors").

It is important to recognize that laws restricting "indecent" or "obscene" speech are not directed at a particular viewpoint. They proscribe only the mode or form of expression, not any ideas the "indecent" language or pictures may purport to convey. If the speaker is concerned with ideas, he can escape the penalty by expressing them in some other form. The Court has recognized that content is separable from form and that other modes of expression are virtually always available. Restrictions on "indecent" or "obscene" speech do not preclude advocacy of any ideas such speech might otherwise convey. For example, prohibitions on "indecent" telephone recordings may be compared with a lawyer who, in open court, addresses the judge in "indecent" terms. Rules against that sort of speech will undoubtedly be enforced by the judge (holding lawyer in contempt). The Court recognizes that other more acceptable means of objecting to the judge are available and the lawyer must use them. As the Court stated in *Pacifica:*

A requirement that indecent language be avoided will have its primary effect on the form, rather than the content, of serious communications. There are few, if any, thoughts that cannot be expressed by the use of less offensive language. . . . At most . . . [i]t will deter only . . . patently offensive references to excretory and sexual

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[2] In its unamended pre-1983 form, § 223 prohibited the use of the telephone to make "any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent . . ." 47 U.S.C. § 223 (a)(1)(A). This precise language was upheld as constitutional in *United States v. Lampley*, 573 F.2d 783, (3rd Cir. 1978). Hence, the prohibition on "indecent" telephone language in § 223 has already passed constitutional muster.

[3] See, "Where Do You Draw the Line?," ed. Victor B. Cline (Brigham Young University Press, 1974).

[4] See, L. Tribe, American Constitutional Law, § 12-18 (1978); Krattenmaker & Powe, "Televised Violence : First Amendment Principles and Social Science Theory," 64 VA. L. Rev. 1123, 1207-1212 (1978); Stone, "Restrictions of Speech Because of its Content: The Peculiar Case of Subject Matter Restrictions," 46 U. of Chi. L. Rev. 81 (1978); Note, "Young v. American Mini Theatres, Inc. : Creating Levels of Protected Speech," 4 Hastings Const. L. Quarterly 321, 344-54 (1977); "The Supreme Court, 1975 Term," 90 Harv. L. Rev. 58, 200-205 (1976).

organs and activities. . . . [T]hey surely lie at the periphery of First Amendment concerns.—438 U.S. at 473 n.18.

Since March of 1983, when dial-a-porn was first commercially marketed, countless children have been exposed to it. It constitutes an attractive nuisance in every home in America where children are present. There is no completely effective way to prevent children from being exposed to "indecent" or "obscene" dial-a-porn so long as it is lawfully and commercially marketed. Make no mistake, dial-a-porn providers care little whether a caller is a child of 9 or an adult of 19—their motive is profit. Children are being injured every day through "indecent" dial-a-porn.

The Supreme Court has repeatedly held that where the interests of children are at stake the government is fully justified in regulating non-obscene material. This significant governmental interest in the protection of minors has been identified in a number of cases. *See, Prince v. Massachusetts,* 321 U.S. 158, 168 (1944) ("[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens"); *New York v. erber, supra,* 756–57 ("a states interest in 'safeguarding the physical and psychological well-being of a minor' " is "compelling" and justifies banning non-obscene sexually explicit depictions of minors); *F.C.C. v. Pacifica, supra,* 749 (government interest in the "well-being of its youth" sufficient to ban all indecent broadcasting to children, as well as adults). In *Ginsberg v. New York, supra,* the Supreme Court upheld a ban on the distribution of non-obscene sexually explicit material to children. The prohibition on distribution of such "indecent"[5] material to children is supported by the exact same interest present when "indecent" dial-a-porn is exposed to children. The "governments interest in the 'well-being of its youth' and in supporting 'parents' claim to authority in their own household justified the regulation of otherwise protected expression." *Pacifica, supra,* at 749; *Ginsberg, supra,* at 639–40. The Court in *Ginsberg* elaborated on these compelling interests. There were two governmental interests which justified limitations on the availability of sexually explicit ("indecent") material to children. First, the Court noted that "constitutional interpretation has consistently recognized that the parents claim to authority in their household to direct the rearing of their children is basic in the structure of our society," and that parents and others responsible for children's well-being "are entitled to the support of laws designed to aid discharge of that responsibility." *Id.,* at 639. Second, the Court stated that "government has an independent interest in the well-being of its youth." *Id.,* at 640. The Court declared that:

While the supervision of children's reading may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them. It is, therefore, altogether fitting and proper for a state to include in a statute designed to regulate the sale of pornography to children special standards, broader than those embodied in legislation aimed at controlling dissemination of such material to adults.

Id. Indeed, Justice Stewart, in his concurring opinion in *Ginsberg,* at 649–50, provided an additional theoretical justification for stricter regulation of dissemination of sexually explicit "indecent" material to minors:

I think a State may possibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.

As the Court more recently stated, the Government's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling." *New York v. Ferber, supra,* at 756–57 (emphasis supplied). Today, children are suffering injury through exposure to sexually explicit "indecent" dial-a-porn. Thus, "society's right to 'adopt more stringent controls on communicative materials available to youths than on those [only] available to adults' " is well established. *Pacifica, supra.* at 757 (Powell, J. concurring) (quoting *Erznoznik v. Jacksonville,* 422 U.S. 205, 212 (1975)); *See also, Miller v. California, supra,* at 36 n. 17; *Interstate Circuit, Inc. v. Dallas,* 390 U.S. 676, 690 (1968); *Jacobellis v. Ohio,* 378 U.S. 184, 195 (1964). No member of the present Court has dissented from this principle.

This governmental right to restrict access to non-obscene but "indecent" material even to adults, when it is sufficiently harmful to children, is a key part of the Court's rationale in the landmark *F.C.C. v. Pacifica Foundation* case.[6] Radio and television broadcasting, like the telephone, is "uniquely accessible to children." *Id.,* at 749.

The Court's willingness to deny access to non-obscene material to adults when children would otherwise be harmed was demonstrated in *Board of Education v. Pico,* 457 U.S. 853 (1982). In *Pico,* the Court remanded with instructions for the lower court to determine whether improper motivations had tainted the Board's removal of certain books from a high school library. The First Amendment would be offended if the court found the books had been removed with intent "to deny respondents access to ideas with which petitioners disagreed." *Id.,* at 872. On the other hand, "an unconstitutional motivation would not be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar." *Id.,* at 871. *Pico* identifies another context in which government may restrict dissemination of indecent materials to children, as well as adults.

Probably the most frequently cited case in opposition to the use of an "indecency" standard is *Butler v. Michigan,* 352 U.S. 30 (1957), with its oft-quoted assertion that the government may not "reduce the adult population . . . to reading only what is fit for children." *Id.,* at 383. In a brief opinion the Court struck down a criminal conviction under a manifestly overbroad Michigan statute that forbade the publication, sale or other distribution of any publication, writing, picture:

or other thing, including any recordings, containing obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth . . .

Id., at 381. The Court correctly ruled that the law was overbroad and "not reasonably restricted to the evil with which it is said to deal." *Id.,* at 383. It is significant to note that Michigan had another statute specifically proscribing the distribution of erotic materials to minors, but that statute was not before the Court. *Id.*

The more recent *Pacifica* Court limited the *Butler* case by distinguishing it. In a real sense, of course, *Pacifica* bans the broadcast of "indecent" material to adults as well as children. However, the Court ruled that unlike *Butler,* the F.C.C. order did not "reduce adults to hearing only what is fit for children" because adults "may purchase tapes and records or go to theatres and nightclubs to hear these words." *Pacifica, supra,* at 750 n. 28; and *See,* Powell, J. (concurring) at 760 ("the Commissions holding does not prevent willing adults from purchasing Carlin's ["indecent"] records, from attending his performances, or, indeed, from reading the transcript reprinted as an appendix to the Courts opinion"). Clearly, this analysis is squarely applicable to "indecent" recordings heard over the telephone. They are easily available to adults from other sources and their removal from the telephone (where they are exposed to children) would not "reduce adults to hearing only what is fit for children" Indeed, the Court itself analogized "indecent" broadcasting with "indecent" telephone language, stating that neither is given "constitutional immunity" to "avoid a harm that has . . . taken place." *Id.,* at 749. The Court cited as justification for its holding the need for newly enacted Congressional legislation against "obscene or profane" telephone language. *Id.,* at n. 27.

One must remember that the *Butler* statute prohibited the distribution of all material "unsuitable" for minors no matter what the source or media. It made it impossible for adults to obtain the material anywhere. As in *Pacifica,* the dial-a-porn prohibition would deal only with one medium which is uniquely hurtful to children. As Justice Powell stated in his *Pacifica* concurrence:

In most instances, the dissemination of this kind of degrading speech to children may be limited without also limiting willing adults access to it. Sellers of printed and recorded matter and exhibitors of motion pictures and live performances may be required to shut their doors to children, but such a requirement has no effect on adults access. . . . The difficulty is that such a physical separation of the audience cannot be accomplished in the broadcast [or telephone] media. . . . [B]oth adults and unsupervised children are likely to be in the broadcast or [dial-a-porn] audience, and the broadcaster [or provider] cannot reach willing adults without also reaching children.

Id., at 758–59 (Powell, J. concurring). Justice Powell went on to state that "[t]his, as the Court emphasizes, is one of the distinctions between" such media and others "justifying a different treatment . . . for First Amendment purposes." *Id.*

As in *Pacifica,* the prohibition of "indecent" dial-a-porn involves a limited form of regulation of a single medium whose adult and youth audiences cannot be physically separated. *Butler,* on the other hand, applied to all media and embraced a wide-ranging (and vaguely defined) subject matter. Moreover in *Butler,* dissemination of the materials to children could generally be controlled at the point of distribution

[5] "Bookstores and motion picture theatres, for example, may be prohibited from making indecent material available to children." *F.C.C. v. Pacifica Foundation, supra,* at 749 (explaining *Ginsberg*).

[6] The Court also rested its holding on the "pervasiveness" of the medium which carries the "indecent" material to children, discussed *infra.* 438 U.S. at 748.

without denying access to willing adults. This is impossible with broadcast radio (as in *Pacifica*) and dial-a-porn.

Indeed, the very facts present in *Butler* limit it to the situation wherein the distributor of "indecent" material can differentiate between adults and children. This obviously cannot be done when the child telephones a tape-recorded message. Clearly, the ruling that better applies to dial-a-porn is *Pacifica*. Telephones are precisely like radio and television because of their easy accessibility to children and the virtual impossibility for parents to monitor their use.[7]

The Court in *Pacifica* also reasoned that "broadcast media" has a pervasive presence in the lives of all Americans. "Patently offensive, indecent material presented over" such a pervasive media "confronts the citizens . . . in the privacy of the home, where the individuals right to be left alone plainly outweighs the First Amendment rights of an intruder." *Id.*, at 748 (citing *Rowan v. Post Office Dept., supra*, banning erotic material from the mails at recipients request). This analysis is squarely applicable to dial-a-porn. It is of the utmost importance to be cognizant that dial-a-porn is presently in the home whether the homeowner wants it or not. Today one cannot have telephone service in the privacy of one's family environment without being required to have dial-a-porn with it. Families with children must give up telephone service to be "left alone" from exposure of their children to this "intruder." Is there really a medium more "pervasive" than the telephone? We know that children (especially teens) spend countless hours on the telephone. At present, no family can be left alone in their own homes without the harmful nuisance of indecent or obscene dial-a-porn.

Further, an argument can be made that because the telephone system is a regulated and protected sysem serving such a vital public function, it should be held to a higher standard of conduct than, say, a newspaper. In essence, the telephone system carries out the governmental function of providing telephone communication to all citizens who choose to have it at a rate set by governmental regulatory bodies. They are given de facto monopoly protection by the government and often use publicly owned property to carry out their business. In return for such privileged status, the telephone system has a public trust. The trust is breached when the telephone system enters the pornography business by exposing "indecent" dial-a-porn to virtually every child in America. *Cf., United Church of Christ v. F.C.C.*, F.2d 994, 1003 (D.C. Cir. 1966) (opinion authored by Chief Justice Burger, then a member of the District of Columbia Court of Appeals).

IV. UNDER 47 U.S.C. § 223(b)(5), THE ATTORNEY GENERAL MAY LAWFULLY ENJOIN TRANSMISSION OF DIAL-A-PORN WHICH VIOLATES § 223(b)(1)(A) OR (1)(B).

Without question, the government may lawfully restrain a party's violation of an obsenity statute through the use of a civil injunction proceeding, as permitted by 47 U.S.C. § 223(b)(5). Such a procedure, whereby the government files a civil action petitioning the court to issue an injunction against the future distribution of specifically named or identified materials has been categorically approved by the Supreme Court. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 50-55 (1973); *Kingsley Books v. Brown*, 354 U.S. 436, 441 (1956). The holdings of *Paris Adult Theatre* and *Kingsley Books* are clearly applicable to § 223(b)(5) and permit the Attorney General to proceed against violations of this statute by injunction.

The Supreme Court has set forth the guidelines for such an injunction proceeding in several cases. Specifically, the Court has held such a proceeding is constitutionally permissible when, as here, the burden of proof and of initiating the judicial review is the governments, and the dial-a-porn provider is allowed to transmit pending a full adversary judicial proceeding, with a prompt final judicial review available. *Paris Adult Theatre*, 413 U.S. at 55; and see *Blount v. Rizzi*, 400 U.S. 410 (1971); *Freedman v. Maryland*, 380 U.S. 51 (1965). Subsection 223(b)(5) if fully supported by authority of the Supreme Court.

V. CONCLUSION

It has been demonstrated that the open availability of dial-a-porn is a serious problem for adults, as well as children. It has further been demonstrated that attempts to regulate dial-a-porn have been a complete failure since the start of this "industry" in 1983. This present situation can only be corrected if the present legislation is enacted by Congress. The legislation will obviously receive vigorous opposition from the dial-a-porn businesses themselves—this is to be expected since they stand to lose millions of dollars if an enforceable § 223 is enacted. However, this memorandum of law has clearly shown that § 223 as amended is firmly supported by legal precedent, and by a tradition for the protection of children from this type of harm. In conclusion, there is no legal obstacle to the passage of this legislation by Congress, and its enactment will finally allow for the regulation of this dial-a-porn industry and its often "illegal" product.

Respectively submitted,

PAUL C. MCCOMMON III,
Legal Counsel.
BENJAMIN W. BULL,
Legal Counsel.
BRUCE A. TAYLOR,
General Counsel.

Mr. HELMS, Mr. President, let me make one clarification. My legislation is not intended to cover common carriers when their activities go no further than that of a common carrier. Common carriers as such do not have the requisite control over a telephone, as contemplated by section 223 of the Communications Act, to bring them within its prohibitions. Nothing in my amendment is intended to change this situation.

Mr. METZENBAUM, Mr. President, section 233 of the Communications Act of 1934 imposes a penalty on those who use telephones to sell obscene or indecent messages to individuals under 18 or to nonconsenting adults.

The law also permits an individual to defend a prosecution for transmitting such a message by complying with FCC Regulations designed to insure that obscene or indecent messages do not reach children or nonconsenting adults.

This amendment would eliminate these provisions of the law.

This amendment would make it a crime to send these messages to consenting adults.

This amendment would also make the work of the FCC to protect children and nonconsentng adults irrelevant.

There is no question that this amendment is unconstitutional. The first amendment does protect the right to make or receive any communication, over the telephone or otherwise, as long as the communication is constitutionally protected.

The courts have held on numerous occasions that obscene communications are not protected by the first amendment.

So there is nothing wrong with saying that obscene commercial phone calls should not be permitted.

But this amendment goes further. It would make it illegal to transmit non-obscene phone messages to consenting adults. This is unconstitutional.

The Supreme Court and lower Federal courts have said that children can be protected against sexual material even if that material is not obscene. But they have said that this regulation must be done in a way which preserves the first amendment rights of adults.

I repeat, we can legislate to protect children.

We can give the FCC some guidelines to follow so that they can continue to work out a solution which meets the legitimate concerns of parents.

We can give the FCC some guidelines so that Regulations can be issued which will protect adults who don't want these calls coming into their homes.

The FCC has been working on this problem for 2 years. They have tried twice to write regulations which would solve these legitimate concerns.

Twice the Second Circuit Court of Appeals told the FCC to go back and try again. The most recent decision is dated April 11, 1986, I want to put it, as well as the earlier one in the RECORD.

Why did the court strike down the FCC's efforts?

Because the FCC could not show that it had adopted the solution which would least infringe first amendment rights.

I am sure everyone here wants to be sure that the privacy of children and nonconsenting adults is protected. I sure want to be sure that they are protected.

But as I am forced to say again and again, we have to respect our Constitution while we accomplish our goals. I know that its not easy to stand up for the Constitution when it is an election year. It's not easy when someone may misrepresent your vote.

[7] Also, one cannot discount the fact that *Pacifica* in 1978 is the most recent expression of the Supreme Court's will. No member of the 1957 *Butler* Court remains on the Supreme Court bench. Indeed, Justice Stewart, who dissented in *Pacifica*, is no longer a member of the Court.

But the courts have been clear. Protecting children is a legitimate goal. Protecting nonconsenting adults from material they do not want to receive is also a legitimate goal.

But you cannot do it unless you satisfy the very strict standards of the first amendment.

We should all work together to solve the legitimate problem of protecting children and nonconsenting adults. This is not a constructive solution; this is not a constitutional solution.

I ask unanimous consent that the decisions of the Second Circuit Court of Appeals be printed in the RECORD.

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

CARLIN COMMUNICATIONS, INC., AND DRAKE PUBLISHER, INC., PETITIONERS,

v.

FEDERAL COMMUNICATIONS COMMISSION, RESPONDENT.

CARLIN COMMUNICATIONS, INC., CAR-BON PUBLISHERS, INC., AND DRAKE PUBLISHER, INC., PLAINTIFFS-APPELLANTS,

v.

WILLIAM FRENCH SMITH, AS ATTORNEY GENERAL OF THE UNITED STATES, AND FEDERAL COMMUNICATIONS COMMISSION, DEFENDANTS-APPELLEES

Nos. 270, 295, Dockets 84-4086, 84-6202.

United States Court of Appeals, Second Circuit.

ARGUED SEPT. 17, 1984.

DECIDED NOV. 2, 1984.

A petition sought review of a rule-making order or regulation of the Federal Communications Commission, promulgated in response to a statute, and in a second case an appeal was taken from denial of a preliminary injunction against enforcement of statute by the United States District Court for the Southern District of New York, Constance Baker Motley, Chief Judge. The Court of Appeals, Oakes, Circuit Judge, held that the Federal Communications Commission, failed adequately to demonstrate that its scheme of regulating "dial-a-porn" services, i.e., by requiring operation only between hours of 9:00 p.m. and 8:00 a.m. eastern time or by requiring payment by credit card before transmission of the message, was well tailored to its ends or that those ends could not be met by less drastic means, the regulation being both overinclusive and underinclusive, and regulation thus could not stand.

Petition to reveiw granted and regulation set aside; judgment of the district court affirmed.

1. Statutes ⚖ 216

Views of sponsor of legislation are by no means conclusory but are entitled to considerable weight, particularly in absence of a committee report. Communications Act of 1934, §§ 223, 233(b), as amended, 47 U.S.C.A. §§ 223, 223(b).

2. Constitutional Law ⚖ 46(1)

Before court would consider constitutional validity of statute, court would look first to validity of regulation promulgated pursuant thereto. Communications Act of 1934, § 223(a, b), as amended, 47 U.S.C.A. § 223(a, b); U.S.C.A. Const.Amend. 1.

3. Telecommunications ⚖ 273

In considering constitutionality of Federal Communications Commission regulation under which operation of "dial-a-porn" services would not be punishable if operation was only between hours of 9:00 p.m. and 8:00 a.m. eastern time or if operators required payment by credit card before transmission of the message, court would take into account fact that regulation was content based, not applying to all "dial-it" services, and accordingly it would be reviewed under higher standard of scrutiny than that of reasonableness and thus it was to be determined whether regulation precisely furthered compelling governmental interest. Communications Act of 1934, § 223(a, b), as amended, 47 U.S.C.A. § 223 (a, b); U.S.C.A. Const. Amend. 1.

4. Constitutional Law ⚖ 90.1(1)
Infants ⚖ 13

Interest in protecting minors from salacious matter is quite compelling, from constitutional viewpoint, but such interest must be served only by narrowly drawn regulations, i.e., by employing means closely drawn to avoid unnecessary abridgement, and government bears heavy burden of demonstrating that compelling state interest could not be served by restrictions that are less intrusive on protected forms of expression. Communications Act of 1934, § 223(b), (b)(2), as amended, 47 U.S.C.A. § 223(b), (b)(2); U.S.C.A. Const.Amend. 1.

5. Constitutional Law ⚖ 90(1)

State may not regulate protected forms of expression at all if it turns out that even the least restrictive means of regulation is still unreasonable when its limitations on freedom of speech are balanced against benefits gained from the limitations. Communications Act of 1934, § 223(a, b), (b)(2), as amended, 47 U.S.C.A. § 223(a, b) (b)(2); U.S.C.A. Const.Amend. 1.

6. Telecommunication ⚖ 273

Federal Communications Commission failed adequately to demonstrate that its scheme of regulating "dial-a-porn" services, i.e., by requiring operating only between hours of 9:00 p.m. and 8:00 a.m. eastern time or by requiring payment by credit card before transmission of the message, was well tailored to its ends or that those ends could not be met by less drastic means, the regulation being both overinclusive and underinclusive and regulation thus could not stand. Communications Act of 1934, § 223(a, b), (b)(2), as amended, 47 U.S.C.A. § 223(a, b), (b)(2); U.S.C.A. Const. Amend. 1.

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John Messenger, Washington, D.C. (Saul Fisher, Melvin A. Cohen, White Plains, N.Y., of counsel), for intervenors N.Y. Telephone Co. and New England Telephone Co.

Judith A. Maynes, G. Daniel McCarthy, New York City, for intervenor American Tel. & Tel. Co.

George Shapiro, James P. Mercurio, Gerald E. Oberst, Jr., Arent, Fox Kintner & Kahn, Washington, D.C., John S. Redpath, Jr., Harold Akselrad, New York City, Henry J. Gerken, Daniel J. Danser, Englewood, Colo., for amici curiae Home Box Office, Inc. and American Television and Communications Corp.

John J. Walsh, Brooklyn, N.Y., for amicus curiae Morality in Media, Inc.

Before OAKES, KEARSE, and PRATT, Circuit Judges.

OAKES, Circuit Judge.

Carlin Communications, Inc. Provides a telephone "service," colloquially called "dial-a-porn," to local and long distance callers at ordinary rates. The callers hear prerecorded messages, which change several time daily as in the case of weather or sports results, describing actual or simulated sexual activity apparently in explicit terms. A dial-it service can receive up to 50,000 calls per hour to an individual number, and, rather incredibly, 800,000 calls per day were made to dial-a-porn in May, 1983; 180,000,000 calls in the year ending February, 1984. Dial-a-porn, accessible by calls to or in the Metropolitan New York area codes 212, 516, and 914, all to the 976 exchange, was far more popular than the horse-race results, the second most popular dial-it service, which received 79,000 calls per day or 29,000,000 per year. Eighty percent of dial-a-porn calls are local, and twenty percent long distance.

Drake Publisher began offering dial-a-porn in the New York area in February of 1983. Carlin replaced Drake the following month and has since expanded to several cities, advertising the dial-a-porn numbers in adult-type magazines owned by Drake and Car-Bon Publishers, Inc. Under the New York leased-line tariffs, Carlin makes two cents per local or long distance call, and the telephone companies—for local calls, New York Telephone Co. and New England Telephone Co., now the NYNEX Telephone Companies (hereinafter NYNEX), and for long distance calls, American Telephone & Telegraph Co. (hereinafter AT&T) and NYNEX—receive the remaining revenues.

The instant case is really two cases. In one, No. 84-4086, Carlin and Drake petition for review of an FCC rulemaking order or regulation[1] promulgated in response to a statute, 47 U.S.C.A. § 223(b) (Supp.1984,[2] mandating FCC action.) In the second case, No. 84-6202, Carlin, Drake and Car-bon[3] appeal from the denial of a preliminary injunction against enforcement of section 223(b) by the United States District Court for the Southern District of New York, Constance Baker Motley, Chief Judge. We affirm the judgment in the appeal, No. 84-6202. We grant the petition to review in No. 84-4086 and set aside the regulation.

THE UNDERLYING STATUTE AND REGULATIONS

The drive to regulate dial-a-porn began when the County Executive for Suffolk County, New York, Peter F. Cohalan, commenced an action against Carlin and the FCC in New York state court, since dismissed.[4] Subsequently Cohalan and a member of Congress, Thomas J. Bliley (R-Va.) sought to have the FCC terminate Carlin's dial-a-porn service by administrative action under then existing legislation, but the FCC concluded that federal law did not restrict dial-a-porn.[5] In light of the FCC's inaction, Congressman Bliley proposed an amendment to section 223 of the Communications Act, 47 U.S.C. § 223 (1982), as a rider to H.R. 2755, 98th Cong., 1st Sess. (1983), the FCC appropriations bill. The House Committee on Energy and Commerce agreed to Congressman Bliley's amendment to H.R. 2755 by voice vote on June 30, 1983,

Footnotes at end of article.

and reported the bill to the full House on September 15, 1983. The legislation prohibited obscene dial-a-porn service:

Section 8 amends section 223 of the Communications Act of 1934 by adding a new subsection (b) . . . that extends section 223's prohibition against obscene telephone calls to prerecorded messages. Obscene messages, whether made directly or by recording device, are prohibited without regard to whether the sender of the message initiated the call. The Committee intends that this section will prohibit obscene messages otherwise available over "Dial It" services.

H.R. Rep. No. 356, 98th Cong., 1st Sess. 19 (1983), U.S. Code Cong. & Admin.News 1983, pp. 2219, 2235.

[1] With discussion on the floors of both Houses of Congress on November 18, 1983, the legislation was amended into its present form before being passed.[6] The amendment explicitly covered "indecent" language and authorized the FCC to promulgate defenses to the act's coverage. 129 Cong. Rec. H10,559-60 (daily ed, Nov. 18, 1983); *id.* at S10,866-67. Congressman Bliley indicated that "indecent" was to be defined by *FCC* v. *Pacifica Foundation*, 438 U.S. 726, 98 S.CT. 3026, 57 L.ED.2d 1073 (1978) (upholding FCC adjudication that specific broadcast was "indecent" as distinct from obscene).[7] On December 8, 1983, the legislation was signed by the President.[8]

In the wake of section 223(b)'s passage, the Commission initiated notice and comment rulemaking proceedings. *See* 48 Fed. Reg. 43,348 (1983); 49 Fed.Reg. 2124 (1984). On June 4, 1984, the Commission issued a Report and Order, 49 Fed.Reg. 24,996 (1984), containing the legislatively mandated regulation establishing defenses to prosecution under section 223(b). The regulation, *id.* at 25,003, provides:

It is a defense to presecution under Section 223(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 223(b) (1983), that the defendant has taken either of the following steps to restrict access to communications prohibited thereunder.

(a) Operating only between the hours of 9:00 p.m. and 8:00 a.m. Eastern Time or

(b) Requiring payment by credit card before transmission of the message(s).

Subsection (a) is intended to regulate dial-a-porn services, while subsection (b) is intended to regulate live telephone services providing sexually explicit conversation, while requireing payment by charge or credit card. Subsection (b) cannot be relied upon by dial-it services because a dial-it caller does not pay "before transmission of the message."

CONTENTIONS OF THE PARTIES AND AMICI

Carlin levels several challenges at the time-channeling regulation. Carlin argues that it is (A) violative of the First Amendment's requirement that a restriction on protected speech be the least restrictive alternative for protecting a compelling governmental interest, (B) either impermissibly overbroad or vague, (C) arbitrary and capricious because the FCC had no legitimate reason for allowing live services to use credit cards and not allowing dial-it services to use automated access codes, and (D) in conflict with common carrier tariffs that require continuous, uninterrupted automatic announcement and recorded program services. Carlin also argues that the statute is vague and overbroad by, inter alia, its proscription of "any obscene or indecent communication." The statute is also said to create an impermissible national standard of obscenity and to constitute a unconstitutional delegation of lawmaking authority.

The Commission counters each of Carlin's claims, arguing, in particular, that the regulatory scheme does not violate the First Amendment because the Commission reasonably rejected as ineffective or impractical other suggested methods for restricting access to dial-a porn.

The NYNEX Companies, intervenors, argue that the FCC properly rejected proposals for automatic screening and blocking of calls to dial-a-porn services and that the time-channeling regulation does not conflict with telephone company tariffs. AT&T, another intervenor, argues that the FCC did not violate rules prohibiting ex parte contacts by meeting with telephone company representatives on April 16, 1984, to review telephone industry blocking capabilities or capriciously in determining that the industry lacked the capability of effectively blocking calls at customers' request. Home Box Office, Inc., and American Television and Communication Corp., amici, argue that section 223(b) is unconstitutionally overbroad because its coverage is not limited to expression that is obscene under *Miller v. California*, 413 U.S. 15, 93 S.Ct 2607, 37 L.Ed. 2d 419 (1973). Morality in Media, Inc., amicus, argues essentially that the time-channeling regulation is ineffective and fails to satisfy Congress's mandate.

DISCUSSION

[2] In any constitutional case we start with the prudential consideration perhaps best set forth by Justice Brandeis in his concurring opinion in *Ashwander v. Tennessee*, 297 U.S. 288, 341, 56 S.Ct. 466, 480, 80 L.Ed. 688 (1936), that courts should not "anticipate a question of constitutional law in advance of the necessity of deciding it," *id.* at 346-47, 56 S.Ct. 482-83 (quoting *Liverpool, New York & Philadelphia Steamship Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S.CT. 352, 355, 28 L.Ed. 899 (1885), and citing in text or footnote numerous other cases). Thus, if the FCC regulation is invalid facially or as applied, we need not reach the question of the constitutionally of the underlying statute, which makes it a defense, 47 U.S.C. § 223(b)(2), that the putative defendant "restricteed access to persons eighteen years of age or older in accordance with procedures" prescribed by the Commission's regulation. Congress surely did not intent that the statute be enforced without a valid regulation in place. The Justice Department seemed to recognized that the statute was unenforceable absent such a regulation when it advised the district court that it "does not anticipate seeking to enforce subsection (b) of 47 U.S.C. § 223 until the pertinent FCC regulations have been promulgated." Letter of Lawrence Lappe, Chief of General Litigation and Legal Advice Section, Criminal Div., U.S. Dep't of Justice (Dec. 21, 1983). While the letter is couched in qualified terms, its purport would seem to reflect Congress's intent. Thus we look first to the validity of the time-channeling regulation.

Justice Brandeis's caution against considering constitutional questions does not allow us to avoid determining whether the regulation violates the First Amendment, for each of Carlin's nonconstitutional challenges to the regulations fails. While the FCC failed to allow a substantial period of time for comments in response to its ex parte discussions with the telephone company representatives, the procedures attending those discussions cannot be said to run afoul of either the FCC's own regulations or general principles of administrative procedure for notice and comment rulemaking.[9] In addition, Carlin's tariff concerns are assuaged by NYNEX's argument, concurred in by the FCC, that a recorded message informing callers that sexually suggestive messages are transmitted after 9:00 p.m. would satisfy the tariff. Finally, whatever the problems with the FCC's regulatory determinations, they do not rise to the level of arbitrariness or capriciousness. The FCC had legitimate reasons for distinguishing between the use of credit cards by live pornographical telephone services and the use of credit cards or access codes by dial-a-porn. The live services require payment by credit card. Thus, the credit card regulation engenders no extra costs as applied to live services. Dial-a-porn cannot use credit cards. While it might use an automated access code, any automated access code system would surely impose costs on users, on the services, or perhaps on the carriers. Moreover, live services presumably have operators taking credit card numbers; an automated access code system would not. Treating live and dial-it services differently is not arbitrary and capricious.

Turning to the constitutionality of the regulation, we first assume that Carlin is injured by the regulation of indecent speech. We have to make this assumption because our record, while replete with descriptions of the telephone messages, is singularly devoid of information as to their actual content except for three such messages attached to a complaint by Congressman Bliley. *See supra* note 5. The assumption is not inappropriate given the vagaries of the line distinguishing between obscene and indecent speech. With this assumption, we address whether time-channeling is a constitutionally valid means of regulating the kind of speech this regulation seeks to cover.

We recognize that the Supreme Court has usually viewed freedom of expression contextually. Thus, while it has said that obscene "material" is "unprotected" by the First Amendment, *Miller*, 413 U.S. at 23, 93 S.Ct. at 2614; *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 54, 93 S.Ct. 2628, 2633, 37 L.Ed.2d 446 (1973), it has emphasized that regulatory schemes designed to regulate obscene materials must be "carefully limited" because of the "inherent dangers of undertaking to regulate any form of expression." *Miller*, 413 U.S. at 23-24, 93 S.Ct. at 2614-2615. The Court has also suggested that different (and less restrictive) constitutional limits apply to legislation that prohibits the distribution of certain material to young persons but does not directly infringe upon the right of adults to obtain materials they wish to see. *See Ginsberg* v. *New York*, 390 U.S. 629, 639, 88 S.Ct. 1274, 1280, 20 L.Ed.2d 195 (1968). So, too, the Court has distinguished between legislation that deals with public displays, unsolicited mailings, or other conduct "thrusting" sexual materials upon those who do not want them, which constitute "an assualt upon individual privacy," *Redrup v. New York*, 386 U.S. 767, 769, 87 S.Ct. 1414, 1415, 18 L.Ed.2d 515 (1967), and legislation that regulates the private viewing of sexual material, *Redmond v. United States*, 384 U.S. 264, 265, 86 S.Ct. 1415, 1416, 16 L.Ed.2d 521 (1966) (obscene private correspondence); *cf. Stanley v. Georgia*, 394 U.S. 557, 568, 89 S.Ct. 1243, 1249, 22 L.Ed.2d 542 (1969) (private possession of obscene matter cannot constitutionally be made a crime). *But cf. United States v. Orito*, 413 U.S. 139, 143-44, 93 S.Ct. 2674, 2677-78, 37 L.Ed.2d 513 (1973) (upholding prohibition of transportation in interstate

commerce of obscene materials by common carrier, whether for private or commercial purposes); *California v. LaRue*, 409 U.S. 109, 117-18, 93 S.Ct. 390, 396-97, 34 L.Ed.2d 342 (1972) (nude dancing in bars regulable under Twenty-first Amendment); *Ginzburg v. United States*, 383 U.S. 463, 475-76, 86 S.Ct. 942, 949-50, 16 L.Ed.2d 31 (1966) (dubiously obscene material treated as obscene when advertised as erotically appealing). Similarly, the Court has, in some cases, looked to the form in which the expression is cast, be it book, magazine, movie, play, or T-shirt, giving books a "preferred place in our hierarchy of values," because they contain "the printed word," *Kaplan v. California*, 413 U.S. 115, 119, 93 S.Ct. 2680, 2684, 37 L.Ed.2d 492 (1973) (but where a book is "made up entirely of repetitive descriptions of physical, sexual conduct, 'clinically' explicit and offensive to the point of being nauseous," *id.* at 116-17, 93 S.Ct. at 2682-83, distribution even to an adult may be criminalized). Finally, the Court has been sensitive to whether a regulatory scheme operates as a prior restraint on speech. *See, e.g., Southeastern Promotions Ltd. v Conrad*, 420 U.S. 546, 552-53, 95 S.Ct. 1239, 1243-44, 43 L.Ed.2d 448 (1975) (holding that denial of use of municipal auditorium for a production because of its content constitutes a prior restraint and violates the First Amendment because of a lack of procedural safeguards).

We also pay heed to the plurality opinion of the Court in *Yound v. American Mini Theatres, Inc.*, 427 U.S. 50, 63-70, 96 S.Ct. 2440, 2448-2452 49 L.Ed.2d 310 (1976) (plurality opinion) (upholding adult-film zoning ordinances), that the content of expression is, or any be, relevant in First Amendment analysis, although '[t]he sovereign's agreement or disagreement with the content of what a speaker has to say may not affect the regulation of the time, place or manner of presenting the speech." *id.* at 64, 96 S.Ct. at 2449. At the same time, we are mindful of the teaching of *Consolidated Edison, Co. v. Public Service Commission*, 447 U.S. 530, 536, 100 S.Ct. 2326, 2332, 65 L.Ld.2d 319 (1980) (citations and footnote omitted).

A restriction that regulates only the time, place or manner of speech may be imposed so long as it is reasonable. But when regulation is based on the content of speech, governmental action must be scrutinized more carefully to ensure that communication has not been prohibited "merely because public officials disapprove the speaker's views." * * As a consequence, we have emphasized that time, place, and manner regulations must be "applicable to all speech irrespective of content." * * * Governmental action that regulates speech on the basis of its subject matter "slip[s] from the neutrality of time, place, and circumstance into a concern about content.' " * * * Therefore, a constitutionally permissible time, place or manner restriction may not be based upon either the content or subject matter of speech.

Finally, we note the Court's recent reaffirmation of the holding in *Butler v. Michigan*, 352 U.S. 380, 77 S.Ct. 524, 1 L.Ed.2d 412 (1957), that "the government may not 'reduce the adult population * * * to reading only what is fit for children.' " *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 103 S.Ct. 2875, 2884, 77 L.Ed.2d 469 (1983) (quoting *Butler v. Michigan*, 353 U.S. at 383, 77 S.Ct. at 526). The Bolger Court, 103 S.Ct. at 2884, also reiterated the language of *Pacifica* that "emphasiz[es] the narrowness of [its] holding," 438 U.S. at 750, 98 S.Ct. at 3041, and highlighted the adverb "uniquely" in the *Pacifica* explanation that broadcasting is "uniquely pervasive" and uniquely accessible to children, even those too young to read," 438 U.S. at 748, 98 S.Ct. at 3040. *Bolger* thus singles out the broadcasting media as subject to a "special interest of the federal government in regulation" that "does not readily translate into a justification for regulation of other means of communication." 103 S.Ct. at 2884.

With this constitutional background in mind, we assess the time-channeling regulation. We begin by noting that the regulation does not warrant the special treatment that the Court has espoused in some contexts. The regulation concerns a telephone service that requires dialing on the part of the would-be listener, as opposed to a public display, in unsolicted mailing, or other means of expression as to which the receiver has no chance to withhold his or her consent.[10] Moreover, the telephone transmits the spoken word, not photograph, moving pictures, or live performances." And, while the aim of the regulation is to limit or prevent access by minors to dial-a-porn messages, its operative effect is to deny access to adults as well. Finally, for the reasons cited by the Court in *Bolger*, it may well be that the Court's holding in *Pacifica* is inapplicable outside the broadcast context.

[3-5] We must reject the FCC's argument that the regulation should be upheld as a reasonable time, place, or manner restriction. Until better informed, we are required to recognize a certain inconsistency between the language of the *American Mini Theatres* plurality, pointing out the frequent necessity of looking at the content of expression to determine its regulability, and the Court's language in *Consolidated Edison*, calling for a higher standard of scrutiny than reasonableness when a regulation is based on the content or subject matter of speech. For the present, we follow the *Consolidated Edison* approach, noting that while the Court has states that "[t]he question whether speech is, or is not, protected by the First Amendment often depends on the content of the speech," *New York v. Ferber*, 458 U.S. 747, 763, 102 S.Ct. 3348, 3358, 73 L.Ed.2d 1113 (1982) (quoting *American Mini Theatres*, 427 U.S. at 66, 96 S.Ct. at 2450), a majority of the Court has never accepted the view that courts should establish a hierarchy of categories of protected speech. We take it as a given fact that the state cannot stifle speech because it disagrees with the speaker's view. Every content-based regulation thus should be reviewed under a stricter scrutiny than that of reasonableness because of the difficulty under *American Mini Theatres*, 427 U.S. at 67, 96 S.Ct. at 2451, of determining whether the state is simply "hostile" to the speaker's point of view. Thus, because the regulation is content based—it does not apply total dial-it services, but only to those transmitting absence[12] or indecent messages—we scrutinize it more closely.

Under this more exacting scrutiny, we must determine whether the regulation precisely furthers a compelling governmental interest. The interest in protecting minors from salacious matter is no doubt quite compelling. *See Ginsberg, supra.* Such an interest must be served, however, only by "narrowly drawn regulations," *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637, 100 S.Ct. 826, 836 63 L.Ed.2d 73 (1980), that is, by employing means "closely drawn to avoid unnecessary abridgment," *Buckley v. Valeo*, 424 U.S. 1, 25, 96 S.Ct. 612, 638, 46 L.Ed.2d 659 (1976). The Government bears the heavy burden of demonstrating that the compelling state interest could not be served by restrictions that are less intrusive on protected forms of expression. *See Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 74, 101 S.Ct. 2176, 2185, 68 L.Ed.2d 671 (1981). And the State may not regulate at all if it turns out that even the least restrictive means of regulation is still unreasonable when its limitations on freedom of speech are balanced against the benefits gained from those limitations. For example, a statute may be unconstitutional even in the absence of an identifiable less restrictive means if there is "no substantially relevant correlation between the governmental interest asserted and the state's" regulatory scheme. *First National Bank v. Bellotti*, 435 U.S. 756, 795, 98 S.Ct. 1407, 1426, 55 L.Ed.2d 707 (1978) (quoting *Shelton v. Tucker*, 364 U.S. 479, 485, 81 S.Ct. 247, 250, 5 L.Ed.2d 231 (1960)).

[6] In the present case, the FCC has failed adequately to demonstrate that the regulatory scheme is well tailorded to its ends or that those ends could not be met by less drastic means. On one hand, the regulation is both overinclusive and underinclusive. As noted above, the regulation denies access to adults between certain hours, but not to youths who can easily pick up a private or public telephone and call dial-a-porn during the remaining hours. And apparently they do not prohibit Carlin from publishing a continual message suggesting a call-back for explicit sex-talk at the appropriate hour and putting youth on notice about when to call back. Moreover, the record before us offers little that demonstrates why a prohibition on dial-it services is needed during daytime school hours when children are for the greater part of the year likely to be in class under adult supervision, while the prohibition is not needed after 9:00 p.m. Eastern Time (6:00 p.m. on the West Coast), when a young person needs to be unsupervised for only about ninety seconds in order to dial the number and hear the message.

On the other hand, the rulemaking record does not show that time channeling is the least restrictive method for protecting youths from dial-a-porn. The FCC expressly rejected certain alternatives, but the record provides minimal explanation for why screening or blocking or using access numbers would not be both more effective in limiting the dial-it audience to those over the age of eighteen and less restrictive of adults' freedom to hear what they want when they want to hear it.

One approach suggested by commenters during the rulemaking process involved giving subscribers the option of blocking access to certain telephone numbers from their premises.[13] As the Commission said, "Since neither the Government nor common carriers would be burdened with the responsibility of making obscenity determinations under this approach, First Amendment problems would be avoided." 49 Fed. Reg. at 24,998-99. The Commission Report and Order noted that "[s]ubscriber screening schemes may be accomplished either by: (1) The installation of appropriate capability within the local telephone company's central office . . . or (2) The development of a screening function within terminal equipment at the customer's premises." *Id.* at 24,999. The FCC rejected both options on the basis of comments by the telephone industry. The Commission found that a blocking or screening scheme, whether implemented from the telephone company's central office or customers' premises

would require time to develop and could entail costs that would outweigh the benefits to be obtained, so that such schemes do not "at this time, represent viable regulatory option[s]." *Id.*

The telephone industry commenters indicated that central-office blocking would require extensive modifications to existing equipment. "It appears," according to the FCC, "that central-office equipment currently in use is incapable of selective screening or blocking on an entire seven or ten digit basis," *id.*, so that any attempt to provide such a service would first require the development and implementation of special facilities for that purpose. But the Commission does not refer to the option of simply blocking all "976" calls.[14]

The FCC rejected a blocking device installed in telephone equipment at the customers' premises because it required "the development and installation of new equipment." *Id.* According to industry commenters, "no existing commercial device has a screening capability that could be deployed within the subscriber's terminal equipment." *Id.* Yet certain federal building actually have blocked all 976 calls,[15] at least since substantial billings were run up in calls from certain Washington offices to dial-a-porn. It the "architecture" of the system works here, why not elsewhere? The record should analyze every option.[16]

Another approach suggested by commenters was that access to dial-a-porn be restricted requiring each caller to provide an access number for identification to an operator or computer before receiving the message. Because dial-it services function by allowing multiple callers virtually unlimites simultaneous access to prerecorded messages requiring operator intervention was though to be economically impracticable. *Id.* at 25,000. The Commission rejected an automatic access code system not by questioning its technical feasibility [17] but by noting that it "would place substantial economic and administrative burdens on recorded service providers." *Id.* While Carlin argued that the interposition of an automated access or identification code system would be upalatable administratively and financially prohibitive we see no great administrative difficulty in having each person who desired access to dial-a-porn services fill out some type of application form, which would then be sent to the appropriate dial-a-porn message service provider who would have a rely on some system of age verification.[18] We recognize, as did the Commission, that the inconvenience associated with this practice might discourage many adults from using the service, and thereby conceivably place its financial viability in jeopardy. We also recognize that such a system would impose burdens upon those adults who do not have access or identification codes but wish to patronize dial-a-porn services, but we need not determine whether this alternative regulatory scheme would present insuperable constitutional problems. The FCC embraced the time-channeling scheme in the face of an argument by Carlin that it will have a disastrous financial effect, by noting that there is not evidence that callers will not call after 9:00 p.m., but rejected the automated access code scheme, by accepting Carlin's argument that the scheme jeopardized Carlin's financial viability.[19] The Commission did not make the crucial determination about which scheme would be less restrictive of freedom of expression.

Certainly the FCC cannot successfully counter Carlin's challenges by arguing that Carlin did not urge these alternative methods of regulation at the rulemaking stage. The FCC's rules apply to everyone and must stand on their own. The FCC must give us a record that shows, convincingly, that the regulations were chosen after thorough, careful, and comprehensive investigation and analysis. Our unanswered questions at oral argument and in this opinion suggest that the FCC has fallen short of that high, but necessary, standard.

In light of our holding, we need not address Carlin's other constitutional challenges to the regulation or its challenges to the facial validity of section 223(b). And while the Government has not stated that it will not enforce the statute after the time-channeling regulation has been set aside, we presume that the Justice Department will continue its earlier policy of not enforcing section 223(b) without a regulation governing dial-a-porn. If the Government does restate its earlier policy, a preliminary injunction is surely inappropriate because of a lack of irreparable injury to Carlin.[20]

Petition to review granted and regulation set aside. Judgment of the district court affirmed.

FOOTNOTES

1. 49 Fed.Reg. 24,996, 25,003 (1984) (to be codified at 47 C.F.R. § 64.201).

2. Federal Communications Commission Authorization Act of 1983, Pub.L. 98-214, § 8, 97 Stat. 1467, 1469.

3. Hereinafter we use Carlin to refer to both the appellants in No. 84-6202 and the petitioners in No. 84-4086.

4. *Cohalan v. High Soc'y Magazine, Inc.*, No. 3490/1981 (N.Y.Sup.Ct.), dismissed for lack of jurisdiction on removal, No. CV 83-603 (E.D. N.Y. Mar. 16, 1983).

5. *In re Application for Review of Complaint Filed by Peter F. Cohalan*, F.C.C. File No. E-83-14, Memorandum Opinions and Orders Adopted May 13, 1983, and March 5, 1984.

6. Section 223(b) as amended provides:

(1) Whoever knowingly—

(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person under eighteen years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for any activity prohibited by subparagraph (A), shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(2) It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the commission shall prescribe by regulation.

(3) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(4)(A) In addition to the penalties under paragraphs (1) and (3), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(B) A fine under this paragraph may be assessed either—

(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

(5) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.

Section 8(c) of Pub. L. No. 98-214 mandated that: The Federal Communications Commission shall issue regulations pursuant to Section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) not later than one hundred and eighty days after the date of the enactment of this Act.

7. While the views of a sponsor of legislation are by no means conclusive, they are entitled to considerable weight, particularly in the absence of a committee report. *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 526-27, 102 S.Ct. 1912, 1920-21, 72 L.Ed.2d 299 (1982). Congresman Bliley had this to say about the term "indecent" and *Pacifica, supra*, in his opening remarks in support of his amendment:

The amendment omits the terms "lewd, lascivious, filthy" from the section 8 of the bill. This change is merely to clarify that Congress intends to be consistent with Supreme Court rulings on obscenity which require a violation of community standards and an appeal to prurient interests. In *Manual Enterprises* v. *Day*, 370 U.S. 478 [82 S.Ct. 1432, 8 L.ED.2d 639], Justice Harlan observed that though words such as these have different shades of meaning in common usage, they are all aimed at obnoxiously debasing portrayals of sex. Therefore, it is not necessary to keep the litany of terms as currently in the statute to prohibit that kind of material. It was necessary, however, to maintain the term "indecent" since the Supreme Court upheld the FCC's assessment of a fine based on indecent material in the Pacifica case.

I would observe as an aside that the ruling in Pacifica clearly affirms the FCC's ability and authority to examine material to determine whether it is obscene or indecent and to assess fines on that basis. This amendment clarifies that question and obviates the need for the FCC's pending inquiry on that issue, though I believe it was absurd for the FCC to ever consider their authority in that area questionable based on Pacifica.

129 Cong.Rec. H16,559 (Nov. 18, 1983).

8. Six days after the bill became law, Congressman Kastenmeier, a cosponsor of section 223(b), extended his remarks concerning the legislation in the Congressional Record:

Last, I would like to take issue with the restrictive interpretation by my colleague of the regulations to be issued by the FCC under section 223(b)(2) of my amendment. As noted in my own earlier remarks:

Congress intends that the FCC promulgate reasonable time, place, and manner restrictions calculated to restrict access to prohibited communications by persons under 18 years of age.

Under the Supreme Court's holding in *Butler v. Michigan*, 352 U.S. 380, 77 S.Ct. 524, 1 L.ED.2d 412 (1957), Congress cannot expect the FCC to impose blanket restrictions on dial-a-porn services if time, place, and manner restrictions are technically infeasible or impracticable. . . . [W]e have carefully constructed section 223, as amended, to avoid reducing the adult population to hearing only what is fit for a child. We leave it to the FCC to prescribe the specific regulations that permit adult access while limiting children's access. If, however, no such regulations are feasible, then less restrictive measures rather than broader restrictions will have to suffice to avoid any constitutional infirmity.

129 Cong.Rec. E5966-67 (daily ed. Dec. 14, 1983).

9. The Commission met ex parte with telecommunications industry representatives on April 16, 1984, to discuss the difficulty and cost of implementing blocking and screening schemes. The Commission's ex parte rules, 47 C.F.R. § 1.1231 (1983), adopted in response to *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 51-59 (D.C. Cir.), *cert. denied*, 434 U.S. 829, 98 S.Ct. 111, 54 L.Ed.2d 89 (1977), specifically permit ex parte contacts in informal rulemaking proceedings, such as this one, until an item is placed on the Commission's meeting agenda. In fairness to parties who are not included in the ex parte meeting, the rules require that a summary of the subject of the meeting be placed in the record, 47 C.F.R. § 1.1231(b)(2), and that the meeting's occurrence be reflected in a public notice, *id.* § 1.1231(b)(4). Both steps were taken here. *See* FCC Public Notice, No. 4052 (May 8, 1984). Indeed, the Commission went further and placed a transcript of the meeting in the record. We note, however, the public notice that information had been received ex parte, that summaries of it were available, and that responses were invited was not made until May 8, 1984, less than a month before the regulations were announced. This timetable suggests that anyone,

including Carlin, had little time to react to the ex parte material. It also offers indirect evidence tending to indicate that the FCC's rulemaking was rushed, doubtless due in part to the 180-day congressional injunction, making its investigation somewhat superficial.

10. Although an unconsenting adult may call dial-a-porn by accident or as the result of a practical joke, the caller can avert his or her ear. Moreover, the regulations are not aimed at this problem. At oral argument the FCC General Counsel stated that the statute's knowingly requirement protected Carlin from prosecution on the basis of wrong numbers. Yet this interpretation proves too much; it would protect Carlin from any prosecution. If Carlin does not act knowingly with respect to wrong numbers, it does not act knowingly with respect to minors.

11. As we have said, we are not concerned here with live services, which requires payment by credit card.

12. Of course, Congress and the Commission have a much freer hand with regulating obscene speech, which is not protected by the First Amendment.

13. The Commission noted that "[t]his method is analogous to a scheme used by the postal service whereby individuals may request material that they consider 'to be erotically arousing or sexually provocative' not be delivered." 49 Fed. Reg. at 24,998-99 (quoting 39 U.S.C. § 3008 (1982)).

14. Blocking 976 exchange calls raises other problems. In order to prevent calls to the dial-a-porn numbers the subscriber would not be able to receive the weather dial-it service or other concededly First Amendment protected information. Nevertheless, without intimating our views were such a regulation adopted, the subscriber would make the choice.

15. This information was not in the record but was provided during oral argument.

16. During the ex parte discussion between the FCC and the telecommunication industry representatives, the participants expressed concern about the cost of screening to the customer. Yet we do not see why the financial burden could not be placed on dial-it services. For example, an alternative regulation might provide a defense to dial-it services that provide screening devices to telephone customers who request the installation of such devices.

17. It should be noted that NYNEX, in its brief, suggests that an automated access code system is infeasible. The FCC, however, did not make an assessment of or rely on NYNEX's claim. *See* 49 Fed. Reg. at 25,000.

18. Perhaps a system of age verification would not be necessary. After all, parents do have "substantial control over the disposition of mail once it enters their mailboxes." *Bolger*, 463 U.S. at —, 103 S.Ct. at 2884. An access code sent to a child would presumably be intercepted by his or her parents.

19. Dial-a-porn use between the promulgation of the regulation and this decision may provide Carlin and the FCC with data to test the FCC's position. As the FCC acknowledges, any regulation that drives Carlin out of business would seem to fall under *Butler v. Michigan*.

20. Arguably, in these circumstances, the district court did not go far enough, as it might have dismissed the complaint. As we recently noted in *Seafarers Int'l Union V. United States Coast Guard*, 736 F.2d 19, 26 (2d Cir. 1984): "Ripeness . . . requires at twofold inquiry evaluating the hardship to the parties of withholding judicial determination and evaluating whether the issues are fit for judicial determination." An explicit policy of nonenforcement suggests that withholding judicial consideration causes no hardship to Carlin, and the incomplete regulatory scheme shows that the issues are not "fit for judicial determination." Where the Government does not intend to prosecute, there is no justiciable "case or controversy." *See O'Shea v. Littleton*, 414 U.S. 488, 493-94, 94 S.Ct. 669, 674-75, 38 L.Ed.2d 674 (1974); *St. Martin's Press, Inc. v. Carey*, 605 F.2d 41, 44 (2d Cir. 1979); 13 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3532, at 241 (1975). However, the Government's letter here was sufficiently equivocal and not expressly applicable to the regulation's being held invalid, as here, so that dismissal of the complaint was, and is at present, unnecessary.

[U.S. Court of Appeals for the Second Circuit]

No. 638—August Term, 1985

(Argued December 19, 1985)

(Decided April 11, 1986)

Docket No. 85-4158

CARLIN COMMUNICATIONS, INC. AND DRAKE PUBLISHERS, INC., PETITIONERS; FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS

Before: Oakes, Kearse, and Pierce, Circuit Judges.

Federal Communications Commission regulation requiring providers of "dial-a-porn" services to provide their services only to callers with access codes set aside with respect to those services operating under New York Telephone's Mass Announcement Network. Held, there was no evidence that access codes are technically feasible under the NYT system; the record contained insufficient evidence that access codes are the least restrictive means of limiting minors' access to dial-a-porn since the Commission failed to consider adequately customer premises blocking devices and possibility of transferring costs thereof to service providers and telephone company.

Petition granted; regulation set aside.

Lawrence E. Abelman, Abelman Frayne Rezac & Schwab, New York, NY (Marianne F. Murray, of counsel), *for Petitioners.*

Sue Ann Preskill, Washington, DC (Richard K. Willard, Hermes Fernandez, United States Department of Justice; Jack D. Smith, Daniel Armstrong, Federal Communications Commission, of counsel), *for Respondents.*

Oakes, Circuit Judge:

We are not without empathy towards a federal agency torn between a congressional directive on the one hand and a court-imposed constitutional limitation on the other hand. Congress has directed the Federal Communications Commission ("Commission" or "FCC") to make regulations restricting access by minors to "dail-a-porn," the shorthand nomenclature of a telephone service that provides a caller with sexually explicit messages. 47 U.S.C. § 223(b)(2) (Supp. I 1983).

Under section 223(b)(2), compliance with these regulations establishes a defense to criminal prosecution for violating section 223(b)(1): making "any obscene or indecent communication for commercial purposes to any person under eighteen years of age . . . ." This prohibition was enacted by a Congress well aware that not only were "very complex issues" relating to "technical feasibility" involved, 105 Cong. Rec. E5966-67 (daily ed. Dec. 14, 1983) (remarks of Rep. Kastenmeier), but that under the Constitution the adult population may not be reduced to "hearing only what is fit for a child." *Id.* at E5966 (citing *Butler v. Michigan*, 352 U.S. 380, 383 (1957)). The regulations are to "permit adult access while limiting children's access," having in mind that "[i]f . . . no such regulations are feasible, then less restrictive measures rather than broader restrictions will have to suffice to avoid any constitutional infirmity." 105 Cong. Rec. at E5966.

When the FCC's dial-a-porn regulations first came before us, we held that they were both overinclusive and underinclusive. *Carlin Communications, Inc. v. FCC*, 749 F.2d 113 (2d Cir. 1984) ("Carlin I"). The Commission had sought to restrict the dial-a-porn operation of petitioner Carlin Communications, Inc. ("Carlin"), and its related corporations to the hours between 9 p.m. and 8 a.m. Eastern Time. 47 C.F.R. § 64.201 (1985). Without declaring that regulation impermissible, we held that the record was insufficiently developed to uphold it. Specifically, while holding that "[t]he interest in protecting minors from salacious matter is no doubt quite compelling," 749 F.2d at 121 (citing *Ginsberg v. New York*, 390 U.S. 629 (1968)), we nevertheless found that the Commission had "failed adequately to demonstrate that the regulatory scheme is well tailored to its ends or that those ends could not be met by less drastic means." 749 F.2d at 121. In fact, the time-channeling regulation denied adults access to dial-a-porn messages during daytime hours but did not prevent minors from calling the service during nighttime hours. Moreover, we expressed concern that the Commission had not adequately examined other alternatives that might better serve the competing interests at stake. We noted, for example, that it might be possible to "giv[e] subscribers the option of blocking access to certain telephone numbers from their premises," *id.* at 122 (footnote omitted), or to "requir[e] each caller to provide an access number for identification to an operator or computer before receiving the message." *Id.* After further development of the record, the Commission has approved a regulation that adopts this second suggestion. We are, however, on the record as developed before the Commission, not yet convinced that the regulation was chosen with the appropriate constitutional strictures in mind even though more "comprehensive investigation and analysis," *id.* at 123, was given on this trip around.

We therefore grant the petition to review, continue the stay of the FCC order, which we granted pending appeal, and remand to the Commission. The stay, however, is granted only at the behest of the petitioners here, Carlin and Drake Publishers, Inc., and not on behalf of any of their affiliates or any other corporations located anywhere else in the United States and applies only to dial-a-porn service providers on the New York Telephone Company ("NYT") system. We are cognizant of the representation of petitioners' counsel at oral argument and otherwise that the petitioners do business only in the State of New York (even though long distance telephones may access their services). We also are aware of the very thorough and persuasive presentation before the Commission by the NYNEX telephone companies (NYT and New England Telephone and Telegraph Company) dated May 14, 1985, and incorporated in the record before us. Irrespective of whether the regulation may conceivably be valid as applied to the rest of the country, it is clearly arbitrary and capricious as to dial-a-porn providers on the NYT system.

The NYT Mass Announcement Service ("MAS") is a one-way distribution system in which it is technically infeasible to provide the two-way access (which apparently is available in most other parts of the country) between the caller and the information provider on which the so-called "access code" regulation now espoused by the Commission is based. In short, the FCC regulations would put Carlin out of business in New York. While this might be a consummation devoutly to be wished by some, it comports neither with this court's prior ruling, nor with overall constitutional or statutory considerations. So stating, we do not decide the constitutionality of feasibility or the Commission's access code regula-

tion insofar as it applies to dial-a-porn providers outside the NYT system. Nor do we express any opinion on the advisability or propriety of the Commission's imposing different requirements depending upon the telephone system involved.

FACTUAL BACKGROUND

We will assume a familiarity with or prior decision in *Carlin I*. To the extent necessary we will update the facts from the record before the Commission and this court.

We note that for the six months ending April, 1985, dial-a-porn calls appear to have leveled off at 6 to 7 million per month, approximating 15 to 18% of the total NYT MAS network calling volumes. Based on the NYT's MAS tariffs as of May 1985, which yield 2.0¢ per call to the "provider" of services, it is evident that the gross revenue of the dial-a-porn service providers[1] is in the vicinity of $130,000 per month. NYT receives 9.4¢ per call (the average revenue per message of 11.4¢ less 2.0¢) to compensate it for the services it renders to the information providers, including collecting revenues from customers. Thus, telephone company gross revenues from dial-a-porn exceed a half million dollars a month.

NYNEX normally does not keep data on usage of pay telephones by MAS callers in general or by dial-a-porn callers in particular. However, NYT did perform a study which found that out of 8,358 calls placed to the eight "adult entertainment" channels in the MAS network during the study period, only 144 or 1.72% were placed from coin lines. There was no indication what, if any, proportion of these 144 callers were minors. Telephone company data also point out that the incidence of interstate coin calling by minors to dial-a-porn is likely to be even less given the relatively high price—$2 or more—for the 57-second phone message, and the fact that any non-paid use of a pay phone, presumably charging the call to a home or credit card number, to call dial-a-porn intestate would show up on a bill. Thus, it is apparent that any solution to the dial-a-porn problem would not necessarily be rendered unacceptable merely because it did not cover coin calling.

THE SECOND NOTICE OF PROPOSED RULEMAKING

Following our decision of November 2, 1984, setting aside the time-channeling regulations, the FCC, in 40 Fed. Reg. 10510 (1985), issued a Second Notice of Proposed Rulemaking ("Second Notice") proposing "to amend its rules to provide a defense to enforcement of prohibitions against dial-a-porn services," *id.*, and soliciting additional comments on its regulations. The Second Notice invited comment on a new approach that "responds directly to the need of parents to police the use of their telephones." *Id.*, at 10512. Under this approach telephone companies would be required to report on monthly bills to their customers any local or long distance calls made to 976-type numbers[2] and the dial-a-porn service providers would be required to reimburse the telephone companies for their administrative costs.

The Commission also called for comments on screening and blocking devices and services, *i.e.*, blocking access to one or more preselected telephone numbers either by installation of specialized equipment at the local telephone company's central office or by the use of callblocking technology in the telephone customer's own terminal equipment. Previously the FCC had concluded that blocking or screening would require time to develop and could entail costs that would outweigh the benefits to be obtained. In the Second Notice, the Commission noted that since its original hearings, "there have been significant changes in the telephone industry," *id.*, and thus "[i]t is possible * * * that screening at the originating central office is tenable." *Id.* With reference to a blocking device installed at the calling customer's premises, the Commission had originally concluded that " 'no existing commercial device has a screening capability that could be deployed within the subscribers's terminal equipment.' " *Id.* at 10513 (quoting 49 Fed. Reg. 24996, 24999 (1984)). This court had noted, however, that certain federal buildings have installed equipment that blocks all outgoing 976 calls. *Carlin I*, 749 F.2d at 122 & n.15. We also suggested that a regulation could be promulgated to provide the section 223(b) defense to a message provider who makes a blocking device available to telephone customers who request it. *Id.* at n.16. The Second Notice stated that "there is considerable competition among terminal equipment supplier, and it follows that there is an incentive among manufacturers, presumably eager for new opportunities, to develop a device that blocks outgoing calls from a subscriber's premises. We believe, therefore, that there exists a ready means of supplying such a device." 50 Fed. Reg. at 10513. The Commission added that there would appear to be no patently insurmountable obstacle to development of, for example, a simple electronic device with a locking cover that would allow a subscriber to block one of a series of telephone numbers—even an entire exchange—from being dialed from his or her premises. . . . Such a device would obviate the need for replacing or modifying any telephone within a home or office to prevent minors from dialing dial-a-porn numbers; and the "lock" would serve as practical means of discouraging children from tampering with the programming.

Id. (footnote omitted). The FCC concluded that "the option of relying upon a blocking device at the subscriber's premises * * * remains a practical option by wh[i]ch we may accomplish the mandate of Congress." *Id.*

It also asked for comments upon access and identification codes, and suggested that an automatic coding scheme known as "scrambling," *i.e.*, mixing the content of a signal before transmission and reconstituting it on receipt, which the FCC has not previously considered, might be feasible and warranted public comment. Finally, since this court did not rule out the limitation of operational hours when carefully evaluated against all reasonable alternatives, *see* 749 F.2d at 123, the Commission invited comment on other time-channel approaches.

COMMENTS IN RESPONSE TO THE SECOND NOTICE

In response to the Second Notice, the Commission received numerous comments, of which the following are included in our record: Carlin; NYNEX; the American Civil Liberties Union (ACLU); Ameritech Operating Companies; Telecommunications Technology Corp. (TTC); Cincinnati Bell Telephone Co; Home Box Office and American Television & Communications Corp.; Pacific Bell and Nevada Bell; Pennsylvania Public Utilities Commission; American Telephone and Telegraph Co.; BellSouth Companies; Bell Atlantic Telephone Companies; and Mountain States Telephone and Telegraph Co., Northwestern Bell Telephone Co. and Pacific Northwest Bell Telephone Co. Reply comments followed from Carlin, NYNEX, the ACLU, and Carlin's counsel.[3]

NYNEX's May 14, 1985, comments to the Commission described its mass announcement service, which is offered to the public pursuant to state tariff. The provider makes record announcements available to large numbers of callers simultaneously without adversely affecting telephone service to others on the public switch network. There are 44 channels on NYT's MAS network. Separate channels provide time and weather information, stock market reports, state lottery results, off-track betting information, and sexually explicit messages. According to NYNEX, the Bell operating companies, including NYNEX, may not provide recorded message services except for time and weather information, partly as an outgrowth of *United States v. AT&T*, 552.F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland V. United States* 460 U.S. 1001 (1983). As a result, NYNEX awarded the use of MAS channels to information providers through a random drawing procedure. Those awarded a channel provide the messages and, under the state tariff, are solely responsible for the contents of the recorded message. The 44-channel system handled over 470 million calls during 1984. Although the aggregate calling volume to the adult entertainment channels has diminished both in absolute numbers and as a proportion of all MAS calling, dial-a-porn remains one of the most popular programs.

NYT's MAS system is a one-way dedicated network. A subscriber calling a MAS number is not connected to the information provider or even to the master center, where the recorded message are piped from the provider's premises. Rather, the call is connected to one of fifteen subcenters, where the caller is bridged onto the recording on a receive only basis. Theoretically, over 7,900 callers can be connected simultaneously to the same recorded message and the system as a whole can handle over 400,000 calls per hour.

The NYT MAS system features synchronous entry and automatic cut-off so that a caller is cut in at the beginning of a desired message and is disconnected after hearing the message once. The three phases operate so that no caller has to wait more than twenty seconds for the message to begin. While he is waiting a ring is heard, which presumably represents the connection through the public switched network to the

[1] Although the record indicates that there are eight dial-a-porn channels on NYT's MAS network, it does not indicate the identities of the service providers. Carlin was the only subscriber to submit comments to the FCC or to petition this court, and nothing in the record indicates that Carline could not control several channels.

[2] "976" is the exchange used by NYT's MAS system, as well as other telephone companies' MAS systems, but there is no technical requirement that MAS channels be limited to the 976 exchange.

[3] Other parties submitting comments or replies in response to the Second Notice was Congressman Thomas Bliley; Continental Telecom, Inc.; Dial Info, Inc.; District of Columbia Public Service Commission; Minnesota Attorney General; Morality in Media; New York Department of Public Service; Phone Programs and Info Line, Inc. (joint comments); Productions-by-Phone; Southwestern Bell; Tel Control; United States Catholic Conference; and United States Telephone Association (USTA). Late-filed reply comments submitted by Telecommunications Research and Action Center were accepted for filing as informal comments. 50 Fed. Reg. 42699, 42700 n.3 (1985).

designated subcenter. NYNEX carefully pointed out that "[m]ass announcement equipment used by other telephone companies around the country may include features (such as two-way communication between caller and information provider, or variable pricing arrangements) which the New York system, given its particular technology and call volume requirements, cannot provide." NYNEX comments took the position that an access code approach is not technically feasible in New York because the access code requires a two-way system and NYT's network is only one-way.

NYNEX also commented on its billing procedures, pointing out that it does not report local calls to its 976 numbers or for that matter to any other local numbers on customers' monthly bills. Indeed, to report the 976 local calls would cost almost $48 million per year plus a start-up cost of almost $7 million. On the other hand, interstate calls are reported separately on monthly bills by interexchange carriers. NYNEX's comments quoted Representative Kastenmeier to the effect that "parental responsibility must play a role here. If a family's telephone bill shows long distance calls—including any to a dial-a-porn number—it should be up to the parents, not the Congress or the FCC, to set rules which limit access by children to these messages." 105 Cong. Rec. at E5967.

Although NYNEX took the approach that blocking at the local telephone company offices is infeasible, it asserted that blocking at the caller's premises is an "[a]ttractive [o]ption," and is both "technically and economically feasible." NYT said it was currently developing a working model of a blocking circuit. Upon its installation where the access line enters the caller's premises (or on a single extension phone if the customer wishes), the circuit may be programmed to recognize up to 128 combinations of dialed digits and, upon such recognition, the circuit drops the connection to the central office. Consequently, the call is never connected through the switch and therefore is not billed. NYNEX "anticipated that the final design of the circuit will permit the individual subscriber to select the numbers to be blocked, and to modify the selection subsequently. . . . [T]he programmable blocking circuit will sell for less than $50 per circuit." The comments went on to say that such a blocking circuit "would be more effective at its intended purpose—restricting minors' access to dial-a-porn—than screening and blocking in the central office." It would work equally well regardless of the type of central office and would not depend upon the availability of code controls. It also would not be restrictive of the ability of adults and minors to make permissible calls because it can be programmed to block dial-a-porn numbers while permitting access to other MAS numbers. Moreover, it is not limited to blocking numbers on the 976 exchange. It would also save the telephone company administrative and installation costs as compared to central office blocking. As previously indicated, the telephone company also considered that dial-a-porn calling from pay telephones is minimal.

NYNEX then addressed the critical question who should bear the costs of blocking devices and whether telephone companies should be required to notify subscribers that blocking devices are available. NYNEX supported the Commission's suggestion in the Second Notice that the cost of obtaining and installing a blocking device be borne by the dial-a-porn operators. It did warn that implementation of such a cost-shifting measure raises three questions: (1) who decides who the dial-a-porn operators are; (2) how should costs be allocated among them; (3) what mechanism should be used for collection? NYNEX suggested that one solution that one solution would require all persons wishing to avail themselves of the section 223(b) defense to prosecution to identify themselves to some central authority, either the Commission or an independent association. This authority would serve as a clearing-house, maintaining an up-to-date list of participants with appropriate identifying information, and administering a funding and allocation scheme, perhaps based on calling volumes or revenues. Parents or telephone companies desiring to be reimbursed for blocking devices would present their claims to the central authority for payment.

NYNEX, in its reply comments as of June 11, 1985, noted that one equipment vendor, TTC, is already marketing customers premises blocking equipment, but that by virtue of the divestiture decree NYNEX would not be able to market its own device. It suggested that the Commission may be able to fulfills its congressional mandate simply by finding that an appropriate blocking device is feasible and available in the marketplace and capable of assisting concerned parents. It agreed with several other telephone companies and the U.S. Telephone Association that "such a market-based approach—under which those customers desiring to block calls from their premises would obtain blocking devices in the competitive marketplace, at their own expense—may be the best solution." But NYNEX stated that if the cost of such a device is too great to be borne by concerned parents the Commission should not impose that burden on telephone common carriers or their ratepayers. The NYNEX reply comments indicate that the Commission may prefer to go instead to a scrambling, access code, or time-channeling approach, the cost of which would fall on the dial-a-porn operators and their patrons. The reply comments do not address themselves to the infeasibility of the access code approach.

By letter of counsel dated July 29, 1985, Carlin also maintained that "the only technical solution that is both feasible and likely to pass constitutional muster is the utlization of currently available customer premises equipment which allow [*sic*] telephone subscribers to block or limit outgoing calls," and that "[s]uch devices have been endorsed by various telephone operating companies." Calin noted Pacific Bell's announcement on NBC's "Today Show" on July 2, 1985, that it will offer customer premises call control devices to all subscribers for nominal one-time charge of not more than $5. Carlin's May 13, 1985, comments also stated that "[a]ny access and identification code procedure would be economically and administratively impracticable where the viability of the system relies on the ability to simultaneously service multiple callers."

THE COMMISSION'S SECOND REPORT

The Commission's Second Report and Order was adopted October 10, 1985, and published October 22, 1985, 50 Fed. Reg. 42699. The Commission rejected all network (exchange, line number, and equal access number forwarding) blocking, by which outgoing calls are impeded at telephone company central offices, because of economic and technical infeasibilty. The Commission also found exchange (three- or four-digit) blocking constitutionally flawed because it would block all "dail-it" messages, *see* 749 F.2d at 122 n.14; moreover, it would be ineffective since MAS numbers are not legally or technically required to be assigned to 976 exchanges.

The Commission rejected line number (seven-digit) blocking, even though there is "a recently innovated service commonly referred to a as Customer Local Area Signalling Service (CLASS)," *id.* at 42703, which would permit such blocking from central offices. Telephone company comments indicated that although feasible, CLASS is currently experimental in nature and implementation of it entails an expensive process not expected to be generally available prior to 1987. Moreover, the CLASS blocking feature is not adequate to handle the large number of dail-a-porn systems currently in operation.

The Commission also rejected another blocking scheme, "equal access (ten digit) number forwarding," finding that number forwarding is not expected to become available on a nationwide basis for some fifteen years and even than would be of only limited use. The Commission indicated that it would continue to monitor the development of these blocking schemes and would be prepared to consider them as regulatory alternatives in the future. We commend the Commission for its careful consideration of these schemes and for its openminded flexibility toward dealing with them in the future. These findings relative to network blocking are fully supported by the evidence, are clearly not arbitrary and capricious, and do not merit further consideration in this opinion.

The Commission also considered the methods by which blocking may be implemented at the premises of dial-a-porn service providers, including time-channeling, message scrambling, and access and identification codes. Time-Channeling was rejected along the lines of our previous opinion, on the basis that "it prevents adults from obtaining access to the messages during specified hours but does not provide reasonable assurance that minors will be restricted during the hours when general access is permitted." *Id.* at 42704. The FCC found message scrambling to be technological feasible and not to require any network modification. The cost of scrambling equipment ranged from $150 to $1000 for each originating facility. NYNEX noted that implementation of this scheme is relatively simple as its is based on a one-way transmission system, which is the system employed by NYT. Message scrambling, however, requires that adults who desire to hear messages install decoding devices that cost $15 to $20 each. The Commission also pointed out that scrambling schemes impose a 24-hour per day restriction upon adults who wish to hear the messages but do not have the appropriate equipment. The Commission believed that a scheme that prevented minor's access to dial-a-porn by requiring all customers who wish to receive "adult" meassages to be responsible for providing decoding equipment misallocated the burdens involved, and noted that the burdens on customers arising from implementation of a scrambling regulation are greater than those presented by other access-limiting schemes.

The Commission concluded that the most effective means of restricting access by minors to dial-a-porn services while at the same time minimizing restrictions on the

rights of adults was to require providers of such services either to send messages only to those adults who first obtain an access or identification code from the service provider or, alternatively, to require the caller to pay for the call by credit card before access is obtained. Under an access and identification code requirement, dail-a-porn providers would be required to issue personal identification numbers or authorization codes to requesting adult customers. Although the Commission concluded that live operator intervention for such call would be economically impracticable, it felt that an automated code-verification system would be feasible. Under such a system, transmission of dial-a-porn messages would not occur until an authorized access code was communicated by the subscriber to the service provider. Each message provider would develop its own access code database and implementation scheme. Access or identification codes would be provided by mail to applicants "after 'dial-a-porn' providers reasonably ascertain that the applicant is at least eighteen years of age." *Id.* at 42705 (footnote omitted). The provider must use a written application procedure that seeks information such as the date of birth and credit card or driver's license number of the applicant. The provider would also have to implement a procedure to cancel codes that are reported lost, stolen, or misused. The Commission did point out that while use of the automated access code system would require that callers use dial-tone multifrequency telephones, rotary dialing equipment with ancillary tone equipment simulating tones made by multifrequency telephones could also be used. Thus, that part of the public that apparently still has rotary telephones [4] could nevertheless access dial-a-porn messages by purchasing and installing a relatively inexpensive device.

The Commission noted NYNEX's strenuous objection to the access code system based on the assertion that such a system requires two-way transmission and is therefore technically infeasible in NYT's one-way dedicated network. In the NYT system as noted *supra*, message providers supply recorded messages to a master center, which distributes the calls to subcenters on a "receive only" basis. The subcenters then transmit calls to the calling party. Although there is no two-way connection between the caller and the service provider or between the caller and the master center, the Commission rejected NYNEX's contentions, stating that nothing in the record indicated that an access code system could not be implemented at the master center. The FCC also stated that a service provider could "choose not to utilize 976 'dial-it' services," but rather could use the normal two-way telephone lines, without mentioning that no revenues would be earned by this alternative. 50 Fed. Reg. at 42705. In any event, the Commission found that the costs of any such systems should be borne by the service providers, not by the telephone companies or customers.

The Commission noted Carlin's response that access and identification codes would be economically and administratively impracticable where the viability of the system relies on the ability simultaneously to service multiple callers, but rejected this assertion as "not constitut[ing] an adequate factual basis upon which we can conclude that [such a] scheme would be more costly than any other alternative." *Id.* It also found that "[u]nder the guidelines set forth in *Carlin* [I] and in view of the absence of data suggesting financial impracticability, we find that an access code requirement is generally less burdensome to 'dial-a-porn' purveyors and less restrictive of adult's access to the messages than network blocking alternatives, time channeling or scrambling." *Id.* at 42706. As to concerns that adults would be reluctant to release personal information to the message providers in order to obtain the access codes, the Commission simply said that "[t]hese comments suggest that 'dial-a-porn' providers devise methods to quickly process access code applications and use advertisements or other means to educate their customers of the requirement." *Id.* n.52.

As to the alternative of blocking at customer premises, the Commission followed up on the Second Notice's expectation that entrepreneurs could produce such devices, and noted that commenting parties indicated that such devices "have been developed and are becoming available at moderate prices." *Id.* at 42705. The Commission took note of several specific devices. Implicitly recognizing their technical and economic feasibility, the Commission said that they "quite apart from our regulation will assist parents in effectively supervising their minor children and limiting access to 'dial-a-porn' or other message services. . . ." *Id.* at 42706. Nevertheless, it found that they did not constitute the least restrictive means of accomplishing the intent of Congress since they did not restrict minors' access to dail-a-porn services from telephones not so equipped. Moreover, in response to comments that the cost for such devices should not be imposed upon parents, the Commission stated, "Requiring telephone subscribers to purchase these devices misallocates the burden of implementing a restriction on access to 'dial-a-porn' services by minors." *Id.* It considered the access code a "less restrictive means." *Id.*

The Commission's final conclusion and the one Carlin challenges is that its access code regulation "represents the most effective available means to limit minors' access to the messages but, at the same time, offers the least restriction on adults' access." *Id.* at 42707 (footnote omitted). The Commission said that "[w]hile [the access code regulation] may incidentally restrict adults' convenience in accessing 'dial-a-porn' messages, we believe our regulation reaches just far enough to achieve Congress' mandate and to meet the court's constitutionality guidelines." *Id.* Again, limiting our decision to the situation presented by the NYT one-way telephone network, we disagree.

DISCUSSION

We reiterate the legal standard for analyzing the FCC's dial-a-porn regulations set forth in *Carlin I*, 749 F.2d at 121:

> Because the regulation is content based—it does not apply to all dial-it services, but only to those transmitting obscene or indecent messages—we scrutinize it more closely. Under this more exacting scrutiny, we must determine whether the regulation precisely furthers a compelling governmental interest. The interest in protecting minors from salacious matter is no doubt quite compelling. Such an interest must be served, however, only by "narrowly drawn regulations," that is, by employing means "closely drawn to avoid unnecessary abridgment." The Government bears the heavy burden of demonstrating that the compelling state interest could not be served by restrictions that are less intrusive on protected forms of expression. And the State may not regulate at all if it turns out that even the least restrictive means of regulation is still unreasonable when its limitations on freedom of speech are balanced against the benefits gained from those limitations.

(Footnote and citations omitted.) *See also City of Renton v. Playtime Theaters, Inc.*, 54 U.S.L.W. 4160, 4161 (U.S. Feb. 25, 1986) ("regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment"). As we also state in *Carlin I*, we will not consider the question of the constitutionality of the underlying statute if the FCC regulation is invalid facially or as applied. *Id.* at 118. Because we find that the record does not support the FCC's conclusion that the access code requirement is the least restrictive means to regulate dial-a-porn, we again do not address the constitutionality of section 223(b).

We think the Commission has failed adequately to consider the feasibility of shifting the cost of customer premises blocking equipment to the providers of services and/or the telephone companies that gain income from the calls. On the record before us, it may well be that the least restrictive means for complying with the congressional mandate lies in this now plainly feasible device available from various manufacturers. The TTC device, for example, operates without the need for equipment modifications, either in telephone company facilities, information provider premises or residences, according to the Commission itself. Yet the only possibility to which the Commission addressed itself was that the telephone customer be required to pay for these devices.

We cannot understand why the Commission did not address the matter of transferring the cost of customer blocking to the providers/telephone companies as a feasible system to comply with the congressional mandate, especially in view of the Commission's decision to impose the cost of access code identification procedures on the providers. The Commission's failure is especially troubling in light of the feasibility problems of an access code with respect to the NYT one-way MAS network, which apparently does not permit the caller to communicate the access code to the telephone company or service provider.[5] The FCC stated

[4] This record does not indicate the percentage of New York customers served by rotary phones.

[5] The Commission stated that "nothing in the record suggests that implementation of a software supported access code recognition system at the master distribution center in a one-way system such as NYNEX's would be infeasible." 50 Fed. Reg. 42699, 42705 (1985). Alternatively, the Commission suggests parties wishing or needing to assert the defense "might simply choose not to utilize 976 'dial-it' facilities. Rather [they] may choose to implement access code recognition in two-way incoming trunks." *Id.*

The Commission's second "alternative" is rather peculiar since a provider not on the 976 network (such as "Dial-a-Prayer" in New York) does not receive revenues on incoming calls; the provider must have eleemosynary motives. One also might ask how many lines such a provider would need to take the place of the MAS 976 number, and what the effect would be on the central system to which such a provider is connected.

As to the first alternative, "implementation of a software supported access code recognition system at the master distribution center in a one-way system," we find no evidence in the record, and neither the Commission nor its brief point to any, that would support a finding of economic or technical feasibility. The only suggestion of technical feasibility is contained in the comments of Ameritech,

that service providers "will have incentives to implement a code recognition system because it represents the most effective and least cumbersome means of satisfying the regulatory mandate." 50 Fed. Reg. at 42705. As the Commission did not consider the alternative of cost-shifting of customer blocking devices to the service providers, however, the record is barren as to why the service provides would not equally have incentives to implement a customer blocking system, which surely is less cumbersome since it does not involve the purchase of ancillary tone devices for rotary dialing equipment, mailings, or written age identification and cancellation procedure.

In short, on the record before us, we are unconvinced that, as to the NYT system, the access code requirement is the least restrictive means for complying with the congressional mandate. Accordingly, we remand to the Commission for exploration of the alternative of shifting the cost of customer premises blocking equipment to service providers and/or telephone companies.[6]

In so doing, we do not rule out altogether, nor do we pass on the constitutionality of, the use of access codes for, as we have stated, this decision relates only to Carlin and the NYT system.[7] Moreover, after the two schemes and cost-shifting devices pertaining to each of them have been more thoroughly examined, it may be that the Commission will conclude that its order is after all the correct one for reasons that it may develop. We do not preclude it from such a conclusion, although we are not impressed by the fact that pay phones would not be covered by the customer blocking device system, at least in the absence of evidence contradicting the NYT study discussed *supra*. At the same time, the customer blocking device system does have the advantage of not hindering access by adults who wish to use these services or who would be deterred therefrom if required to place their name on someone's list.

Petition to review granted; regulation set aside as to the NYT MAS network.

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which state that in Illinois Bell's one-way system the caller connects to the central office and that the access code screening operations could be performed there. Ameritech noted that this procedure would involve the exchange carrier and would impose upon it prohibitive expense and administrative burdens. The FCC made no reference to Ameritech's statements concerning access codes. Moreover, in NYT's system, the caller connects to one of fifteen subcenters, not a central office. Even assuming the feasibility of locating the access codes at Illinois Bell's central office, as to which the FCC made no findings, there is nothing in the record to indicate feasibility in the NYT system. At the least, the Commission must show a " 'rational connection between the facts found and the choice made.' " *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S 281, 285 (1974) (quoting *Burlington Truck Lines, Inc. v United States*, 317 U.S. 156, 168 (1962)), *see SEC v. Chenery Corp.*, 332 U.S. 194, 196–97 (1947). On remand the Commission, if it is still seriously considering access code identification for the NYT MAS network, will no doubt wish to elaborate on the feasibility of such a system, especially on the availability of technology to permit its use on a one-way network in general and the NYT system in particular, as well as on the billing and cost problems referred to in the Comments of Pacific Bell and Nevada Bell, Ameritech, and USTA. We further note that the record is rather barren even as to the economic feasibility of access codes in two-way systems.

[6] We do not at this point decide whether the FCC has the authority, under section 223 or otherwise, to require the telephone companies, which receive significant revenues from dial-a-porn, to help pay for customer premises blocking equipment. We note that shifting the total cost onto providers/telephone companies may result in a certain amount of "free ridership" among customers who are interested in the device for reasons unrelated to blocking access to dial-a-porn. We therefore recommend that the Commission consider the deterrent effect of imposing a percentage of the cost on customers.

[7] The Commission's failure to consider shifting the cost of customer premises equipment makes it unnecessary for us to decide the constitutionality of the access code plan. That plan may very effectively prevent minors from accessing dial-a-porn, but we express our concern over the potential chilling effect of a written application and identification procedure. *See Talley v. California*, 362 U.S. 60, 64–65 (1960); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958).

Mr. THURMOND. Mr. President, we are willing to accept the amendment. We think it is a wholesome amendment and it will protect the young people.

Mr. CHILES. We are willing to accept the amendment.

Mr. METZENBAUM. Mr. President, I think we are prepared to act in connection with the amendment.

The PRESIDING OFFICER. The question is on the second-degree amendment.

The amendment (No. 3071) was agreed to.

The PRESIDING OFFICER. The question is on the first-degree amendment, as amended.

The amendment (No. 3070), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. I thank the Chair for recognizing the Senator from Oregon.

Mr. President, I would like to raise the vulgar subject of money at this late date. As I have roughly computed this authorization bill, we now have about $375 million of additional spending. And I want to remind the body that the budget resolution that was passed by this body, and the appropriations that have been made under the restrictions and the definitions of that budget resolution, are now at the limit.

I would also point out to the body that the President of the United States, under the budget resolution, has about a $4 billion emergency category that only he can request expenditures from. The President has not made any request for these moneys, that I know of, to be spent on the drug war.

I want to just say that, as chairman of the Appropriations Committee, it would be very difficult, if not totally impossible, to fund this measure. We are, as I say, at our limits. The White House, through the OMB, has notified the Senate committee that they approve of our appropriations levels, but we have yet to come to the floor and receive the onslaught of amendments that I know are waiting. Then we have to go the the House conference and they, with the exception of one or two, are at a higher funding levels than the Senate appropriation bills.

Therefore, this becomes a very important question. It is going to be wonderful for us to pass this bill and go out and say, "We have passed a bill declaring war on drugs," without any attention given to where the funding is coming from or at what point in time we are going to make that decision.

Mr. President, let me say, I can see the scenario right now. We will hang this back on the continuing resolution. And it will be very easy for this body to say, "We have declared a war." It is very easy for the President of the United States to say we are declaring a war, but the way it will end up is the Appropriations Committee will then be given the responsibility of finding the money. And if we are going to redistribute the money, we are going to be in that same clash between expenditures going for military and expenditures for nonmilitary programs.

Mr. HATCH. Will the Senator yield on this point?

Mr. HATFIELD. Yes.

Mr. HATCH. This is under my committee's jurisdiction and, of course, when we did the work on this bill, new spending came to $325 million. Then we added another $50 million.

The House is looking in terms of authorizing around $1 billion in these areas. So I think the Senator from Oregon is making a very good point.

I might add that I have a great deal of respect for my colleague, Senator WEICKER from Connecticut, who, I think is as reasonable a person in these areas as we have in the Senate. Senator WEICKER understands the budgetary difficulties and the appropriations difficulties. And he is justifiably upset, in my opinion, as is the distinguished Senator from Oregon.

As the chairman of the authorizing committee, I have to say that we tried to do our best to keep this within reasonable paramenters. So I share the same frustrations as my two colleagues.

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

Mr. HATFIELD. I just want to say, then I will be happy to yield, I would like to say again that when you look at the nondefense appropriation bills and you take them in toto in the last 5 years, you will find a general reduction of about 33 percent. You will find about a 69-percent increase in the military budget during that same period of time.

Now, at the present time, we have $292 billion for defense 050 for 1987. The House has about $286 billion and

we are going to be battling in conference as a matter of compromise between those levels.

I could very easily fund this program by just deducting it from the $292 billion level for the military. I am but one Member and I do not think at this point in time I would have the votes for that. But I think it borders on the realm of irresponsibility and miscommunicating to the public that somehow we are committed to a war on drugs and we are going to fight a war.

You do not fight a war without ammunition and the ammunition in this case is money.

I applaud the President for his initiative, but I think it also is the responsibility of the President to declare exactly where the war is going to be financed. And at this point in time, unless I have missed on the information line, there has been no information except some generalities about redistributing funds from this and from that and so forth.

There is a $4 billion figure from which the President—and I would like to yield to the chairman of the Budget Committee, as he had asked me to do, to comment on this.

I would say that if we want to play a responsible role, then we should amend this bill and say all of this is contingent upon the President of the United States requesting the moneys to wage this war or declare precisely where he will provide the funds within the budget resolution that we have already acted upon.

I do not have to repeat what the Senator from Connecticut has said, but I can tell you one thing: It is not going to come out of the Labor-HHS appropriations bill. We are already at the limit of the funding of those programs for fiscal year 1987. Those are programs in place and some of them are badly neglected and undernourished. We do not have $375 million, or whatever the figure ended up to be, to reduce from the current funding level.

I yield to the Senator from New Mexico.

Mr. DOMENICI. I thank my friend, the chairman of the Appropriations Committee, for yielding.

Let me say that I agree with the chairman in terms of the general statements, but I think it is even a little worse. Frankly, the bill that we are going to pass, if our numbers are right, Mr. President, will add $1.4 billion in budget authority over the budget resolution and in excess of presently appropriated programs in the 13 bills. And it will add $632 million in outlays in everything from Commerce; State-Justice; Defense; Transportation; and Labor, Health and Human Services. And, actually, Labor, Health and Human Services, $205 million in outlays, $410 million in budget authority.

The Appropriations Committee has only $200 million in outlays of the whole budget that you have not yet appropriated as per your allocations.

And you are right on the money. There is not one bill that is in excess of the budget resolution allocation. So there is only $200 million there. And that was not intended for this, but it is there. There is plenty of budget authority under the budget resolution.

So it seems to me that the chairman of the Appropriations Committee is making a good point.

I will tell you this: If the CR comes to the floor and somebody says, "Let us fund this bill," they are going to have to go through the various appropriations bills and amend or offer it as a lump sum amendment at the botton and it will be out of order. Because, somebody will stand up—I guarantee you, if no one else does, I will—and just say, "By $632 million, it violates the budget resolution in outlays."

So it seems to me we have to be realistic about it. We want to declare this war and pay for it.

□ 0030

I think we should express ourselves tonight, in some way, that we have to find additional resources to pay for this. And I am willing to work with the White House, and I am sure the Senator is, in an effort to see how they will pay for it. Frankly, the contingency fund is rather clear. If the President wants more defense, more foreign affairs money or anything that he determines an emergency, the resolution says up to $4 billion is there, if he requests it, and tells us how we pay for it.

We have 5 or 6 more days, I say to my friend from Oregon, and clearly I think with his help and with the help of the subcommittee and the ranking member, we ought to pass it with some indication that we expect to find a way to pay for it.

Mr. WEICKER. Will the Senator from New Mexico yield?

Mr. DOMENICI. I will yield the floor. The chairman has the floor.

Mr. HATFIELD. I am very happy to yield. I want to make one additional remark, then I would be happy to yield. In fact, I will yield the floor unless someone else asks me a question. I would be very happy to work with the Senator from New Mexico, and any others, on this matter that we have raised on the floor.

I want to say that as I sense the mood of the Senate, we were moving toward a third reading and wanting to complete this bill. I want to put the Senate on notice that I have no intention of letting this bill be completed, not because I do not join in the war on drugs, but we have to be responsible. Before we send this bill to third reading, and all that goes with that, and finally act on this bill, it has to have a provision for funding.

Mr. WEICKER. Will the Senator yield?

Mr. HATFIELD. I will yield to the Senator from Connecticut.

Mr. WEICKER. Is it true, I ask the distinguished chairman of the Appropriations Committee, that upon passage of the bill we no longer have an authorizing problem. We have an appropriations problem. That is very easy then to say, well, look, it is your baby. You find the money within those allocations. We are not telling you what to do. You find the money. We are already at the ceiling.

I would only say this to my colleagues: that even before the bill came to the floor and the President made his proposal, that proposal was predicated on taking money away from alcohol programs, away from drug programs, away from the mentally ill, et cetera. That and those comments made on this floor is what resulted in the revision of the leadership package. So if the leadership package did not take money from those programs, it just did not say anything.

So in effect what you are going to do is if you pass this bill without this matter being tended to, then in effect the original proposition is back in place. We have to take it from the mentally ill, we have to take it from alcohol, education, and so on down the list. It is not to keep you here late this evening. It is not to stall the war on drugs. If the chairman is adamant as he is, and I am as adamant I might add in joining him in opposing the passage of this bill, it is only to make everyone realize, especially the President since he is the one declaring and staring this fight, if we are going to have a war on drugs, we are going to pay for the war on drugs, period. It is as simple as that.

I can assure my colleagues if the money were there, hey, I am not up here to oppose this. I think politically, realistically, any way you want to have it, this bill is going to make a great deal of sense. But if indeed you are going to sacrifice everyone in terms of winning this war, then at least let us make the sacrifice with a little courage here to do what has not been done up to the point which is to pay for it before, if I may conclude, it becomes a situation where the only way to pay for it is to penalize other elements of our society who indeed are just as weak as those addicted to drugs.

Mr. HATFIELD. Mr. President, I yield to the Senator from Florida, and then I would like to yield the floor so others may get the floor in their own right.

Mr. DECONCINI. I would like to ask a question.

Mr. HATFIELD. I would be happy to yield to the Senator from Arizona.

MR. CHILES. I would ask my friend who is the chairman of the Appropriations Committee if he understands that the Senator from New Mexico—and the Senator from Florida is going to oppose—is going to offer an amendment before we go to third reading that will make very clear that this is an authorizing bill, and that it has not obligated or appropriated any money. That is an amendment that the Senator from New Mexico is going to propose, and has only held back to make sure that we cover any other section that might come up in some amendment on this floor.

I think we have studied the bill so far. We know any area that might be a problem. But we want to make sure no other amendment is adopted and does not add to that problem. In other words, we would be able to take care of that amendment, too. So as this bill will pass, it would only be an authorizing bill. Then I would just say to my friend, it seems if it is an authorizing bill, for all of its good intentions, it does not spend any money. It does not take any money from the programs of the Senator from Connecticut, or until something happens later which then certainly there will be some proposal made on the continuing resolution. But at that time, that proposal must stand on the proposition of which it is made, and I think the Senator would have every right to say how is it going to be funded. Where is it going to be funded?

I say to my good friend I do not know that he says when the armed services bill comes on the floor, wait a minute, this is spending money.

So we are not going to go to third reading on this bill until you have the money that you are going to spend in here because it is an authorizing bill, as are all of the authorizing bills that come up, and I know of none of them where we say, wait a minute, we are not going to go to third reading on that bill because we do not know where that is going to be spent.

So the Senator from New Mexico, I think I am speaking for him, certainly intends to put that amendment. I intend to join with him on it to see this is only an authorizing bill, and when this then as proposed, we go on to something else. I think the Senator is exactly right. You are going to have to say how are we going to pay for it, where is the money going to come from, and address it at that time.

We are not going to adjourn this session without some kind of a program on drugs, whether it is this bill precisely or a combination. We know that. I think we have to face that reality. What I am saying is if we had a provision in this bill that was contingent upon the President of the United States making his simple request under that contingency fund, it would be a very simple thing.

There is no reason why we cannot identify that predicated upon the President's request as a source for funding this. But if we do not do something like that under the circumstances and the exigencies of the time I know precisely what the scenario is going to be and so does the Senator from Florida. The pressure is going to be so overwhelming on that continuing resolution process because let us face it, we are going to hang everything on that before we finish with it. We are going to hang everything on that before we finish with it. We are going to be authorizing programs. We enacted the most comprehensive crime bill in the history of the country on the appropriations process. It is the last train out of the station. That is where we are going to do all of these things. Then we will be back there with the job of finding the funding.

MR. DECONCINI. Will the Senator yield for a question?

MR. HATFIELD. Yes.

MR. DECONCINI. Is the Senator from Arizona correct that on this continuing resolution which the House passed, they funded the drug bill, and they passed it with a 0.34-percent cut in all discretionary accounts?

MR. HATFIELD. Yes, a totally unsatisfactory system of providing that funding. The White House said they would veto the bill under that funding mechanism because that was an action of sequestering appropriated funds that they were trying to avoid under the reconciliation process.

So I might say that is out of the picture. But there is going to be something placed in that void.

MR. DECONCINI. If the Senator will yield, the chairman says that is out of the picture. It seems to me the White House has said no new revenues or we are going to veto it.

MR. HATFIELD. That is not the only reason they have listed for vetoing the bill. But that is one of the reasons.

MR. DECONCINI. They said no new revenues.

MR. HATFIELD. They said across-the-board reductions would not be satisfactory for them to sign a continuing resolution. I am very, very anxious to send a continuing resolution that can be signed.

MR. DECONCINI. Of course I am too. But I think we are confronted here with maybe no answer. If the White House has said no new revenues, they should send up an idea on how to fund their drug bill. They say, "hey, House, you cut 0.34. What do we have to do here?" If that is the case, it seems to me like maybe it is appropriate to ask the White House what are you going to do, Mr. President? We are going to take a cut.

MR. HATFIELD. My proposal is to throw the ball back in the President's court by asking for a declaration from the President to take the program, and the funding of it, out of his contingency budget.

Mr. President, I yield the floor.

□ 0040

MR. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

MR. EVANS. Mr. President, since the Senator from Oregon has yielded the floor, let me say to him that I agreed wholeheartedly earlier in the evening, suggesting that I did have a way to pay for what we are about to do. I think it is absolutely and totally irrational for us to claim to be fighting a war on drugs and say, "Oh, my, this is just an authorizing bill."

Fine war. Blank bullets. We are really not doing much of a job if we do that.

This Senator, in spite of the fact that it is 20 minutes to 1 on a Sunday morning, now intends to pursue his method of funding unless I hear that someone else has come in with a better one.

This is in the nature of a user fee, if you will, a modest increase on the licit drugs in this country to help pay for a war on the illicit drugs.

Mr. President, I have a couple of other amendments that I am sure will be accepted by both sides, but at some point, and maybe now is the point, unless I hear to the contrary——

MR. BIDEN. Will the Senator yield for a moment?

MR. EVANS. I yield.

Mr. President, we do not have order in the Senate.

The PRESIDING OFFICER. The Senate will be in order.

MR. BIDEN. The Senator from Washington made an indirect reference to me. He said he had two other amendments that he believed would be acceptable. I hope he is correct. Hope springs eternal at this hour of the morning. I would suggest he move the two amendments that he thinks will be accepted before we get to the immigration bill by the Senator from Wyoming and some easy votes on some of the other things.

MR. EVANS. I would suggest it would be appropriate, with the understanding that this 500-pound gorilla is waiting in the wings and before we get to third reading, if we do not have a better idea, I intend to bring it forward.

MR. FORD. Will the Senator yield for another question?

MR. EVANS. Yes.

MR. FORD. The Senator has referred to a 12.5-percent increase for distilled spirits, beer, wine, and cigarettes. Is that the amendment?

MR. EVANS. I say the Senator is correct.

MR. FORD. Let me say that a motion will be made, I hope, to table

your amendment. But if your amendment is not tabled, in the terms of a former colleague, Senator Jim Allen of Alabama, you may take your trip to Mandalay.

Mr. EVANS. I hear the Senator from Kentucky, but at the same time I believe that somewhere, someday, sometime—probably today—we have to be honest with ourselves and recognize that we have to pay for a war and we have to pay for it somehow. If we choose to pay for it this way, I am perfectly prepared and willing to join in the sponsorship with any or all Senators on an alternative that honestly pays for the war. I do not intend, regardless of the time, to sit here and to go to third reading and pass a bill that is so blatantly on the cuff. You cannot fight a war on the cuff.

AMENDMENT NO. 3072

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS] proposes an amendment numbered 3072.

After the word "aircraft" in Sec. 3004(e)(1)(A), insert the following:

Provided, that no funds may be expended to modify any existing aircraft for air surveillance purposes unless the proposed modifications comply with validated requirements and specifications developed by the Coast Guard.

Mr. EVANS. Mr. President, I think the amendment is self-explanatory. There is authorized $45 million for the procurement of radar installations on Coast Guard planes. This would merely require that before we do so, we go through a process of specifications and requirements for what amounts to really a new type of surveillance aircraft.

I belive it has been cleared on both sides of the aisle.

Mr. THURMOND. Mr. President, we accept the amendment.

Mr. CHILES. We discussed the amendment and we accept it.

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

The amendment (No. 3072) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3073

(Purpose: To create a White House Conference on Drug Abuse and Control)

Mr. EVANS. Mr. President, I have a second amendment I send to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ARMSTRONG). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS] proposes an amendment numbered 3073.

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

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

The amendment is as follows:

At the end of Title I, insert the following new subtitle:

SEC.—. SHORT TITLE.

This subtitle may be cited as the "White House Conference on Drug Abuse and Control Act".

SEC.—. ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference on Drug Abuse and Control". The members of the Conference shall be appointed by the President.

SEC.—. PURPOSE.

The purposes of the Conference are:

(a) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(b) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(c) to highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse.

(d) to examine the essential role of parents and family members in preventing the basic causes of drug abuse and in successful treatment efforts.

SEC. —. RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(a) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solicitation of illicit drugs and the need to provide greater coordination among such programs;

(b) the impact of drug abuse upon American education and the effectiveness of drug education programs in our schools, with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(c) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs; and

(d) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs.

SEC. —. CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections — and —, the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(a) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Transportation, and the Director of ACTION;

(b) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and Mayors of Cities;

(c) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(d) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, education and law enforcement.

SEC. —. ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. —. FINAL REPORT.

Not later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections — and —. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

SEC. —. AVAILABILITY OF FUNDS.

No more than $2,000,000 shall be appropriated to carry out this subtitle. Amounts appropriated under this section shall remain available until expended.

SEC. —. EFFECTIVE DATE.

This section shall become effective upon enactment of this Act.

Mr. EVANS. Mr. President, this combines what I believe is the best of an element that was in each of the two original bills presented to the Senate. That is to call for a White House Conference on Drugs, a broadly based conference that is aimed at doing what I think is terribly necessary. That is bringing together not just the expertise and those who need to be working together at the Federal level, but also to bring in those from States and local communities and those private citizens who have much to contribute and

who, after all, are going to be the foot-soldiers in this war against drugs.

I believe the amendment has been cleared on both sides of the aisle.

Mr. BIDEN. Mr. President, this amendment is a very good amendment, in my view, one that we have discussed in the past. I believe I am a cosponsor of it. If not, I would like to be. I would highly recommend to the managers of the bill that we accept this amendment.

Mr. EVANS. Mr. President, I ask unanimous consent that Senator BIDEN be added as a cosponsor.

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

Mr. THURMOND. Mr. President, we accept the amendment.

Mr. CHILES. Mr. President, we accept the amendment also.

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

The amendment (No. 3073) was agreed to.

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

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 3074

(Purpose: To designate alcohol and drug abuse prevention programs targeted at student athletes)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3074.

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

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

The amendment is as follows:

Section 4106 of the bill is amended—

(1) in subsection (c)(2)(B) by inserting after "administrators," the following: "athletic directors,"; and

(2) in subsection (d)(1)—

(A) in clause (D) by inserting after "counselors," the following: "athletic directors,"; and

(B) by redesignating clause (I) as clause (J) and inserting after clause (H) the following:

"(I) special progams and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students; or

Mr. METZENBAUM. Mr. President, if there is to be an all out war on drugs, there can be no doubt about the location of the front line. It is America's schools. Here our children are introduced to drugs; here they make their decisions about drug use; here we must draw the line in the sand.

We all recognize that there is a problem: 92 percent of high school seniors use alcohol; 85 percent use alcohol or other drugs; 30 percent use these drugs every week; 15 percent use them every day; 10 percent are chemically dependent.

What is the answer? Education and prevention. It is the only way. No matter how heroic our efforts interdicting drugs or prosecuting drug pushers, drugs will find their way to kids. Our only hope is aggressive, thoughtful drug abuse programs in our schools.

One such program has been implemented in the Forest Hills school district of Cincinnati. The principal of Anderson High School, Mr. Michael Hall, has been instrumental in establishing a comprehensive high school drug intervention program that has produced results. The program has been singled out as a model by the Drug Enforcement Administration for its emphasis on student athletes.

Mr. President, my amendment designates alcohol and drug abuse prevention programs targeted at student athletes. It does not cost anything. It simply adds student athlete drug prevention programs to the list of activities which communities and schools can support with the Federal funds authorized under this bill.

Mr. President, I would like to outline briefly the full scope of the model program operating in Cincinnati—a major component of which is the focus on student athletes.

The Anderson High School program is run by a group called the Core Team which consists of volunteer teachers and administrators who have all had extensive training in state-of-the-art drug and alcohol abuse programs. Mr. President, let me emphasize from the outset that alcohol is a priority. It is in Mr. Hall's words, "The biggest problem we've got." Sometimes that point gets lost in the shuffle with all the attention paid to crack, heroin, and other narcotic drugs.

The first step in the Core Team's program is identifying drug abusers. The purpose is to identify kids with a problem so that the school can intervene and try to get these users to stop their abuse of alcohol and/or drugs. A lot of work is involved in identifying the kids with a drug problem. There are no easy clues. It often takes a trained eye to spot a kid who needs help. Surveys are also necessary to monitor the extent of the problem in the school.

The second step is to conduct awareness programs for staff, parents, and students. The purpose here is to develop the best possible avenues for conveying accurate, scientific information on the prevalence and the dangers of drug abuse.

The third step is a special prevention program for student athletes. The centerpiece of the effort is the high school coach who is charged with making the drug abuse prevention effort a critical component of high school athletics at every level.

The program includes surveys of drug use among athletes; training for coaches; drug awareness meetings with parents; involment of high-school booster clubs; the use of team captains as role models; sessions with student athletes presented by recovering student athletes and professional athletes.

The main thrust of the program is coaches working with kids. The goal to develop a counter peer pressure among athletes who are role models not just for their teammates but for the student body at large. In 3 years at Anderson High School, the number of drug users among senior student athletes has declined by 44 percent, among eighth graders by 68 percent.

The Justice Department's Drug Enforcement Administration has singled out the Anderson High School effort as a model program and I ask unanimous consent to place in the RECORD the DEA booklet "Team Up for Drug Prevention" which is based on the Anderson High School program.

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

[From the U.S. Department of Justice, and Drug Enforcement Administration]

TEAM UP FOR DRUG PREVENTION WITH AMERICA'S YOUNG ATHLETES

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, DC.

DEAR COACH: We are pleased to provide this set of materials to assist you in developing a drug abuse prevention program at your school. For their efforts in compiling this information we wish to thank Dr. William P. Deighan, Superintendent; Michael D. Hall, Athletic Director, and Peg Rider, Coordinator of Special Programs of Youth; Forest Hills School District, Cincinnati, Ohio. There are variety of materials in the packet that should be very helpful to you.

The National High School Athletic Coaches Association and its affiliated state associations, as well as the National Football League, the National Football League Players Association and the International Association of Chiefs of Police, are working closely with the Drug Enforcement Administration in a program of cooperative action to prevent drug abuse by high school youth. All groups have collaborated on the development and production of materials which have relevance to coaches and their responsibilities to their student-athletes. We challenge you to become involved in this program

In the booket entitled "For Coaches Only: How To Start a Drug Prevention Program," we gave you some ideas and challenges. This packet is more than that, it is an ACTION PLAN . . . a way to implent those ideas and challenges that we talked about.

As a former high school coach, I am sure that it you take the action and administer the plan, you will achieve the results of having an impact on the drug abuse problems in your school.

Sincerely,

JOHN C. LAWN,
Deputy Administrator.

NATIONAL HIGH SCHOOL
ATHLETIC COACHES ASSOCIATION,
Ocala, FL.

DEAR COACH: Please let us express our appreciation to you for taking a positive step toward drug abuse prevention in your community. As an athletic coach and a caring person, you are uniquely qualified to be the catalyst who may "make the difference" in the lives of students in your school.

Your National High School Athletic Coaches Association in cooperation with the Drug Enforcement Administration has made the commitment to the high school boys and girls to become an integral part of the solution of the drug abuse problem. While the ultimate solution may rest with drug prevention education in the elementary schools, we high school people must confront the problem . . . head-on . . . in our individual schools . . . with our own athletes . . . with our own students in our classroom . . . this year. . . . now!!!

We are pleased to report that the National Football League, the International Association of Chiefs of Police, and the National Football League Players Association will assist the DEA and the National Association in the implementation of the Drug Prevention Program.

Coaches in twenty thousand high schools . . . each with his or her own athletes, other students, coaching staffs, administrators, parents, and community leaders as part of the process . . . have the potential to "move mountains" in a drug prevention program. We are proud that you have accepted this professional responsibility in your school and community. As a leader, you will want to engage other coaches and teachers in this thrust to prevent drug abuse. The simple fact that a school may not now have a drug problem does not preclude that possibility that a problem may emerge in the near future!! Drug abuse prevention is an investment in tomorrow's America . . . not an expense in today's budgets to time, effort, and money!!

The attached information has been examined by your NHSACA and comes highly recommended for your use in your school and community. Thanks again!

Sincerely,

CAREY E. MCDONALD,
Executive Director.

FOREST HILLS SCHOOL DISTRICT,
Cincinnati, OH

DEAR COACH: You took an important step in the fight against drug and alcohol abuse among students when you sent for this packet. Enclosed you will find material that was prepared by key staff members in the Forest Hills School District for use with the Drug Enforcement Administration's booklet, "For Coaches Only: How to Start a Drug Prevention Program."

All of the materials that are included in this packet are used in the drug prevention program for athletes in Forest Hills. They form the basis on which our drug prevention program is based.

As you will see the program described in these materials does not cost anything to put into operation. Your only investment, then, in starting a similar program is your time and effort.

The packet of information includes the following printed material:

1. Effects of athletics on young people.
2. Reasons why athletes use alcohol and other drugs.
3. Enabling behaviors of coaches.
4. Responsibilities of the coach in regard to chemical abuse.
5. Suggestions to coaches on starting a drug prevention program for athletes.
6. Nine (9) step drug prevention program for athletes.
7. Suggestions for captains when dealing with their teammates.
8. Initial survey to be given to your athletes.
9. Sample letters to parents.
10. Coaches' survey (to be returned to the Forest Hills School District).

Before using the material from this packet of information, we would like to suggest that you share it first with your principal as some of the items may involve school policy.

The Forest Hills School District is committed to the importance of drug education and prevention programs for athletes and we are willing to help you in any way that we can. If you have questions, comments, need suggestions, or would like to discuss an idea about prevention, give us a call (513-231-3600).

Yours truly,

DR. WILLIAM P. DEIGHAN,
Superintendent.
MICHAEL D. HALL,
Coordinator of Athletics.

EFFECTS OF ATHLETICS ON YOUNG PEOPLE

In order to understand why our athletes drink or use other drugs we should look at the effect that athletics has on young people.

There is a heavy focus on athletics in virtually every high school and junior high school in the counrty.

Schools often are rated according to how good their athletic program is.

Pressure to perform is put on athletes from Mom, Dad, other students, teachers, young kids.

Athletes have everything that all other kids have as problems, plus the other pressures that athletics bring:

1. Pressure to win.
2. Pressure to perform well: "People will think less of me." Athletes are placed in a position where there is a lot of chance for failure. Pressure to maintain the image that "I'm better than you." The public hold high expectations for athletes.
3. Athletics give to young people a high rate of unearned esteen (14 to 16 year old kids walking around town like they were "big shots")

SOME RESAONS WHY ATHLETES USE ALCOHOL AND OTHER DRUGS

Let's focus on a diagram called a "Feeling Continuum." It is a model of the full range of a person's feelings. The model goes from one extreme of a very low feeling (even depression) to feelings of elation, or a high feeling.

Try to focus on the time when you felt your very best or highest. What was your highest high?

1. Was it when you participated on an athletic team and you has a big win or won the league championship . . . or was it when you participated in the state tournament . . . or played well in a difficult game.
2. Was it the day you got married . . . or was it the day you had your first baby?
3. Was it a time when you used alcohol and drugs?

Feelings that athletes get from alcohol and other drugs are the same feelings that they get from winning and losing. They come off the playing field or leave the gym with their adrenalin flowing and very aroused . . . they want to keep that feeling. What do they often turn to? . . . alcohol.

Alcohol works every time . . . Our sports program, or curriculum, our boy scout troop, the best father . . . is not going to make them feel good every time—but alcohol/drugs will!

It is a way for some athletes to cope with pressure and stress.

Some athletes receive a lot of peer pressure from other students, and even other athletes, to use alcohol and other drugs.

We all do the things we do because we believe they are the best things to do. But sometimes some of the things that we do as coaches make it easy or enable athletes to use mood-altering chemicals. The following are examples of enabling behaviors used by some coaches which help and encourage kids to use:

1. We overhear party plans but pretend that we did not hear.

a. What a coach should do is to confront the athlete immediately and tell them that kind of talk and that behavior is inappropriate. . .and you should not ignore it.

b. Tell the athletes you are concerned about them.

2. We smell alcohol or marijuana but do nothing.

a. Coaches rationalize and discount this information.

b. The athlete is thinking that you must know. (If you don't confront them, they will interpret it as if you, the coach, don't care.)

c. You should confront the athlete immediately.

3. Keeping secrets from assistants and the team.

a. The whole team knows anyway.

4. They don't talk about past chemical abuse incidents.

a. Coaches often will avoid the subject of alcohol and drugs.

(1) Some coaches mention the subject at the start of the season and never mention it again.

(2) Forms of denial by coaches: (a) "We don't have a problem." (b) "It is not a problem on my team—it is a problem on other teams." (c) "If a problem exists on my team it is a reflection on me. (Therefore I am going to ignore the problem.)" (d) "Whatever is done will not work anyway."

b. Chemical abuse incidents that have occurred in your school are relevant and meaningful to your athletes, and your athletes can learn good lessons when you discuss those incidents with them.

5. Not enforcing the rules: (a) Learn to be firm; (b) Set limits and stick with them; and (c) This is a very important part of the program. Do not minimize the importance of enforcing rules.

6. Inappropriate use of alcohol by coaches at clinics, summer activities, adult parties,

victory celebrations or drowning sorrows at local watering holes: (a) Through our own behaviour, we sometimes send the message to the kids that it is okay to use alcohol; (b) Coaches should, at all times, be a good model for their athletes; and (c) One of the long range goals for any school athletic program to think about is to try to get every coach to sign a pledge not to use alcohol during his/her sport season.

RESPONSIBILITIES OF THE COACH

You are a teacher . . . you are a coach . . . you are an adult and your number one concern should be the welfare of children. You should, therefore, be concerned about the seriousness of drug abuse among young people. In your position it is expected that you would take the responsibility for a drug prevention program for student athletes.

You don't have to be a counselor . . . you don't have to be an expert in treating drug abuse.

You must be able, however, to recognize the signs of alcohol and other drug abuse.

You must know where to get help: School Counselors; Drug Abuse Coordinator in your school; Core Team in your school; Intervention Team in your School; and Local agencies whose purpose is to help young people with chemical abuse problems.

If we diagnose a student as having a reading difficulty, we send that student out for help. It follows that if we diagnose a chemical dependency problem, we should also send that student out for help.

Don't be turned off from starting a drug prevention program for student/athletes because you feel that you do not know enough. It is important for you to remember: You don't have to be an expert.

SUGGESTIONS FOR COACHES

1. Call your captains together and talk about alcohol and other drug abuse.

(a) Ask the captains to make a commitment to actively work at getting their teammates not to break any training rules during the sport season.

(b) The commitment is what the "star" on the sleeve is all about.

(c) Meet with the captains regularly. Included in this packet is a list of "Suggestions for Captains."

2. Open the dialogue with your athletes on alcohol and other drug abuse.

(a) Talk about past and present chemical abuse incidents. Don't avoid the subject. Don't keep any secrets.

(b) Keep everything up front all season long.

(c) Communicate to your athletes that you really care about their use. It's important for you to communicate this. They need to know that you care.

(d) Talk to your athletes about the results of the initial survey that you do with the team. Ask for a change in their behavior.

(e) We want our coaches to make a minimum commitment. We want our coaches to talk to their athletes a minimum of once per week on the subject of use of alcohol and others drugs

3. In order for our drug program to work—to be effective—we have to get our athletes to use peer pressure on teammates to not use any mood-altering chemicals.

(a) Ask your athletes to turn peer pressure around to *not* use.

(b) Team members have the right to put peer pressure on teammates who are not following the rules. With some team members not following training rules, it could an often does cause serious morale problems on the team.

(c) Team member should confront "users" and say, "one more time and we go to the coach." "I will do whatever it takes to get you to knock it off."

4. Enforce all training rules:

(a) Report all violations to your athletic director or principal.

(b) "Stars" included.

(c) Be firm, do not deviate from the rules.

5. Know the symptoms—Recognize the signs: (a) Mood swings from the very high to the very low; (b) Recognize changes in personality; (c) Apathetic and listless behavior; (d) Loss of coordination; (e) Red eyes; (f) Profuse sweating (way beyond normal sweating); (g) Late to practice: Do not show at Saturday practice because they are "sick" (h) Listen for subtle cries for "help."

6. Have a definite plan in mind when one of your athletes is caught; (a) Investigate the incident; (b) Go to your athletic director to start the process; (c) Involve the family: If the recovery does not involve the family, the recovery rate is 1 to 20; If the recovery involves the family, the recovery rate is 1 to 2.

7. When you overhear students talking about an athlete(s) who has broken training rules, investigate.

(a) We must actively try to catch violators of training rules.

(b) In the past, coaches have ignored this kind of information and athletes have been allowed to get by, undisciplined.

(c) All coaches must participate in presenting and enforcing rules: Assistant coaches can not ignore the problem.

8. When you overhear party plans, confront the athlete immediately.

(a) Tell them that kind of talk and that behavior is inappropriate.

(b) Tell the athlete how you feel.

(c) Do not pretend you did not hear: They know you heard.

9. When you smell alcohol or some form of tobacco, confront the athlete immediately: (a) Start the discipline process.

10. Get parents involved in co-signing training rule pledge cards.

11. Check on your athletes . . . call them at home . . . let them know that you care.

12. Follow up any discipline with help for your athlete.

(a) It is important for your athletes to know that you will enforce the rules but you are not going to reject them.

(b) After they have been disciplined, they need your help in order to regain their dignity and get their life in order.

c. You don't have to be an expert at drug counseling: Know where help is available, i.e: counselors, drug prevention coordinator, core team, etc.

d. In the Forest Hills School District, we tell our athletes: If the athlete turns himself in for chemical abuse, they remain on the "team" and we give him counseling and/or treatment; and If we catch the athlete violating training rules, they are off the team . . . but they still get counseling or treatment.

13. Coaches should be good role models.

14. Find alternative activities for athletes after contests.

(a) Parties can be organized by parents in a parent's home: Invite team, their friends, cheerleaders, parents and coaches; Serve hot dogs, pop, potato chips; One rule: "If you come, you must stay until 11:30 p.m."; Show a video tape of the game.

(b) Swimming parties.

(c) Racket Club parties.

(d) Ask the team for suggestions.

(e) Students and athletes are really looking for alternatives to parties where there is alcohol and other drugs.

(f) Our Booster Clubs have offered to help plan and be involved in the alternative activities. You should ask for their help.

THE FOREST HILLS DRUG PREVENTION PROGRAM FOR ATHLETES

The First Step.—We decided to find out just how serious the problem was in the Forest Hills School District with our athletes. Our first step was to do a "needs assessment" by way of a questionnaire. We surveyed all senior athletes at each high school and all 8th grade athletes and cheerleaders at the junior high school. The results were startling. The results indicated that our athletes were, in fact, serious users and abusers of alcohol and other drugs.

The results showed:

1. High School: (a) 65% admitted using alcohol during their sport season; (b) 12% admitted using pot during their sport season; (c) 5% admitted using other drugs during their sport season.

2. Junior High School: (a) 38% admitted using alcohol during their sport season; (b) This is where the program must start.

3. 92% of the senior athletes and cheerleaders reported that it was true that there were parties every weekend involving drinking by athletes that are participating in a sport season.

4. The seniors estimated that from 50 to 90% of our athletes use alcohol once per week, every week of the year.

The above figures are just the highlights of some of the results of the survey. In fact, the results of our surveys are in line with the results of similar surveys from school systems all over the United States. The results of our survey and other national surveys are pretty typical of what is going on—probably including your high school and your junior high school.

Medical studies show that the use and abuse of alcohol and other drugs by athletes will affect their participation and the development of their skills. But of even more concern, is another fact that our athletes have told us. Our athletes say that there are few social drinkers or users among teenagers. They tell us that when kids drink, two things happen:

1. They drink till they pass out or get sick.

2. They drink until the alcohol runs out.

If our athletes are abusing almost every time they use, it is harmful—it is unhealthy—and it is dangerous for our athletes and we should do something about it. We should do something about it before someone gets killed in an accident.

The Second Step.—(If we did not pass this step, we would not have gone on with the program.)

We met with our coaching staff. We asked our coaches to look at the problem. They did—and they accepted the problem as a challenge and decided to do something about it. We held several meetings with coaches and developed a plan to attack the chemical abuse situation before it got any more out of hand. We then developed some guidelines and suggestions for coaches.

The Third Step.—In the fall, we met with the captains of every sport as a group. We asked our captains to make a commitment and that commitment was to actively work at getting their teammates to not break any training rules during the sport season. The commitment that we asked them to make is what the "star" on the sleeve is all about.

We continue to meet with our captains regularly.

The Fourth Step.—We sent two letters to the parents of our athletes. The first letter reported on the survey that was taken in the previous spring. Many of the parents expressed alarm and concern after seeing the results of the survey. In the second letter we talked to parents about the "pledges" the athletes would be taking at the beginning of each sport season and the meaning of those pledges. (Parents are asked to co-sign the pledge.) We discussed the role of parents and what further action parents can take.

The Fifth Step.—The Booster Clubs became very involved in our undertaking. They purchased a brochure entitled, "My Parents Don't Think I Drink Because I'm in Sports." They handed a copy of that brochure to the parents of each athlete at the start of each sport season, at an activity we call "Meet the Team Night."

The Sixth Step.—Several parent drug awareness meetings were held throughout the year. The purpose of the meetings: Help parents recognize the problems of drug abuse among young people. Give parents help in dealing with the problem.

As a "draw" to get parents out to this meeting, we had a big name professional athlete speak who was, himself, recovering from the use of alcohol and other drugs.

The Seventh Step.—We scheduled three (3) general sessions for athletes. These sessions will be held in the fall, winter and spring. They were conducted during practice time because our coaches are committed to the program and are willing to give up practice time for the program. The presenters in these sessions will be recovering student/athletes and pro athletes. We want our athletes to know how alcohol and drugs can mess up their lives. Therefore, we'll bring someone that they can relate to in that regard.

The Eighth Step.—At the end of our first year in the program, we conducted another survey of our senior athletes and 8th grade athletes and then compared the results of that survey to the survey conducted when we started the program.

The Ninth Step.—We will conduct a year-end evaluation with our coaches, captains, athletes and parents.

The Main Thrust.—The main thrust of our program is coaches working with kids. We have given our coaches a considerable amount of training. The outcome of that we hope will be . . . athletes using peer pressure on teammates to not use alcohol and other drugs. If our program is to be successful, it will be because of athletes using peer pressure on teammates to follow the rules.

Is the Program Working?.—Yes, our drug prevention program is working. This is what we have seen so far this year:

People are talking about the program and the problem. There has been a lot of focus in the media.

Some athletes are stating publicly that they are no longer going to use.

Some athletes who were using last year are not using this year and they say it is because of this program.

One father turned his son in for drinking because the father felt an obligation to do so after co-signing a training rule pledge card. We have a tremendous amount of respect for that father.

One mother of a female student called the principal of the high school to tell him that our coaches had ruined her daughter's party. She went on to say that our coaches had told their players that they were not to attend the party because alcohol was going to be served. Needless to say, we were thrilled that this incident happened.

Several of our teams have told their coaches that last year there was a high percentage of team members who were using alcohol and other drugs. This year they prided themselves on being absolutely clean in regard to training rules. We are very pleased that this has happened on some of our teams. The athletes further told their coaches that they changed their attitude because of the focus our coaches put on chemical use.

These are positive signs that our drug program for athletes is working. At the time of the writing of this packet of material, we are in the process of completing the year-end survey of our athletes . . . those statistics were not available for this publication.

There are school systems in Minnesota who have had similar programs to ours for years and they are reporting a history of a lot of success . . . and it looks like we're headed for that also.

SUGGESTIONS FOR CAPTAINS

1. In order for our drug program to be effective . . . we want our captains and our athletes using peer pressure on their teammates not to use any mood altering chemicals.

2. You should talk with your team. Say to your team how you feel and mean what you say:

(a) "This is what I want to see happen":

No one uses. Everyone follows the rules . . . the "star" of the team included.

"I do not want to see or hear about anyone using."

(b) "This is what I will do—and this is a promise."

If I see it or hear about it, I will confront you and warn you once.

I will do everything I can to get you to stop and that includes going to the coach.

I will go to the coach if you do it a second time.

(c) Training rules are important:

In order for us to be the best athletes that we can be.

In order to have a great team.

(d) If you cannot follow the training rules . . . quit the team.

There is nothing that will tear down team morale faster than one or two players who refuse to abide by the training rules.

We do not want anyone on our team who can not follow the training rules.

If you have to use alcohol and other drugs . . . do it not as a member of our team.

3. Each captain should be a model:

(a) Your team looks up to you.

(b) Young people in the community look up to you.

(c) Do not put yourself in a position where people could accuse you of drinking or using other drugs: It is strongly suggested that you do not attend any parties where alcohol is served.

(d) You must be above reproach.

4. Find some alternative activities for your team . . . alternatives to going to parties where alcohol is served.

(a) Do things together as a team, such as: Pizza; Movie; Organize a party at your home; Etc.

(b) Ask the team for suggestions.

(c) The Booster Club and your coach will help plan and be involved in alternative activities. Ask for their help.

5. Make it clear to your teammates that if any of them think they have a chemical abuse problem, there is help available.

(a) It does not mean that they are off the team, if they ask for help: The coach, AD and princial guarantee that they will provide help while leaving the player on the team.

6. Being a captain is a year-round commitment . . . it is not a seasonal commitment.

(a) You should be a year-round model that your team can look up to.

CONFIDENTIAL TO THE COACH—ALCOHOL/DRUG SURVEY FOR ATHLETES

The first step in any drug prevention program for athletes is to take a survey in order to positively determine the extent of the chemical use among your athletes. The survey establishes the facts on which you can base your program . . . without the survey, you are only guessing at the extent of chemical use among your athletes.

When you finish the survey and compile the results you will know the following:

1. The amount of alcohol and other drugs used by your athletes: during the sport seasons; during the school year; male or female; at each grade level.

2. Suggestings from your athletes on how you can help.

3. How prevalent the use of alcohol and other drugs are in your community: Athletes, as a group, use on the same percentage as the rest of the student body.

4. You will know exactly what the alcohol and other drug use is in your community . . . before, you were only guessing.

It is recommended that before you conduct the alcohol/drug survey of your athletes, you first touch base with your school administration. You will need their support to know what your program is all about.

ALCOHOL/DRUG SURVEY FOR ATHLETES

Your response to this survey will be kept strictly confidential. Do not put your name on this survey.

The purpose of this survey is to gather information about the use of alcohol and other drugs among student athletes. Please be as honest as you can about your experiences and feelings about alcohol and other drugs.

Directions: Place an "X" on the appropriate blank line.

1. Male— Female—.

2. 7th— 8th— Freshman— Sophomore— Junior— Senior—.

3. Check the line for each substance that best describes your alcohol and other drug use:

	Never use	Used once in last 12 months	Used 3–9 times last 12 months	Used 10–39 times last 12 months	Used over 40 times last 12 mo.	Used at least once per week
Alcohol						
Marijuana						

	Never use	Used once in last 12 months	Used 3–9 times last 12 months	Used 10–39 times last 12 months	Used over 40 times last 12 mo.	Used at least once per week
Tobacco (smoke or chew)						
Uppers (speed)						
Downers (Quaaludes or valium)						
Other Drugs						

4. Did you any of the following substances during your last sport season?

alcohol, yes— no—.

marijuana, yes— no—.

tobacco, (smoke or chew) yes— no—.

other drugs, yes— no—.

5. Would you go to a student party where alcohol (including beer) is being served? yes— no—.

6. Would you stay at a party where training rules are being violated? yes— no—.

7. Did you ever feel that you had a problem with your alcohol or drug use? yes— no—.

If you answered yes, was it: —alcohol? —drugs? —both?

8. Did anyone ever say to you that they were concerned about your alcohol or drug use? yes— no—.

9. Does a member of your immediate family (father, mother, sister, or brother) have a problem with alcohol and drugs? yes— no—.

10. Do your parents know when you have been drinking or using other drugs? I *never* drink or use drugs—. My parents never know—. My parents know once in a while—. My parents know most of the time—. My parents know all the time—.

11. Describe what you believe should be done by the coaches to fact the issues that this survey has raised.

(Suggested First Letter to Parents)

Dear Parents of XXXXXXX High School Athletes:

You are probably aware that in the spring of last year a survey was conducted of all XXXXXXX High School Athletes and Cheerleaders on the subject of alcohol and other drug use. The purpose of this letter is to inform you of some of the results of the survey.

64 percent of the senior athletes and cheerleaders surveyed reported using alcohol during their sport season last year.

16 percent reported using marijuana during their sport season.

80 percent of the senior athletes and cheerleaders reported that it was true that there are parties every weekend involving drinking by athletes that are participating in a sport season.

The seniors estimated that from 50% to 90% of our athletes use alcohol once per week.

The above figures are just the highlights of some of the results of the survey. The results of our survey are in line with the results of similar surveys from school system, all over the United States.

The results of the survey indicates that our athletes are serious users of alcohol and other drugs. One of our coaches said, after seeing the results of the survey, "I used to think that the athletic drug problems is not my problem, but now I know that I must do something about it."

Medical studies show that the use and abuse of alcohol and other drugs by athletes will affect their participation and the development of their skills. But of even more concern is another fact that our athletes have told us. Our athletes tell us that there are few social drinkers or users among teenagers. They tell us that two things happen:

1. They drink till they pass out or get sick.

2. They drink until the alcohol runs out.

If our athletes are abusing almost every time they use, it is harmful—it is unhealthy—and it is dangerous for our athletes and we should do something about it. We should do something about it before someone gets killed in an accident.

Medical experts long ago established that alcohol is a serious drug. The results of our survey point out that the abuse of that drug among our athletes is acute. We have been somewhat unaware of the seriousness of the situation because alcohol and other drug abuse among our athletes has been underground. We can not ignore this study—the facts are there.

Our coaching staff has studied the results of the survey and they are very concerned about our athletes and their use and abuse of alcohol and other drugs. Our coaches have accepted this problem as a challenge and we have a plan to attack this chemical abuse situation before it gets any more out of hand.

Parents, we will be getting back to you in the very near future to let you know more of the details on our plan.

Sincerely

———.

(Sugested Second Letter to Parents)

Dear Parents of XXXXXXX High School Athletes: Your job as a parent is an important one but a difficult one—and it is not being made any easier by young people using alcohol and other drugs. Recently I sent you a letter outlining some of the results of a survey on alcohol and other drug use by our athletes. Many of you expressed alarm and concern after seeing the results of the survey.

There is no question that alcohol and other drug abuse is one of the most serious problems facing you as a parent and we as school teachers, coaches and administrators.

The coaching staff at XXXXXXX High School is moving ahead with plans to confront the problem of chemical abuse among our athletes. They need your help, as parents.

How can you help?

1. Talking and listening to your son or daughter about alcohol and other drugs. There is all kinds of research that concludes that a key to combating drug abuse is "in the home." Experts believe that parents must spend time in face to face talks with their children, in order to listen and to discuss drug issues with them.

2. Sign the training rule pledge card. One of the things that parents are asked to do when their son or daughter goes out for an athletic team, is co-sign a "training rule pledge card." This pledge card must be signed by the athlete and parent before the athlete can participate in a sport or cheerleading squad. By signing the pledge card, the player makes a commitment that he/she will not drink or use other drugs or violate any training rules during the sport season. We ask that you spend time with your son or daughter to make sure they are willing to make the commitment to not violate any training rules during their sport season. We would like you to make a firm commitment to help us monitor the fact that your son/daughter is not breaking training rules. This is the help we need from you in order to reverse this present trend of excess chemical abuse by our athletes.

3. Attend a parent training session. The school district will sponsor parent training seminars throught this school year. These meetings will provide parents with help in dealing with the problem of chemical abuse among our young people. The information that will come out of these meetings will be helpful for you as a parent. We will let you know when a date has been set for these sessions.

We would like to know your thoughts about our chemical abuse program for athletes and cheerleaders. Give us a call so we can talk about it with you.

Yours for excellence in athletics,

———.

FOREST HILLS SCHOOL DISTRICT,
Cincinnati, OH.

SURVEY FOR COACHES

The purpose of this survey is to gather information on how coaches feel about the use and abuse of alcohol/drugs by student athletes. Please be as honest as you can about your initial feelings about chemical use by student athletes.

Your response to this survey will be kept strictly confidential. Please do not put your name on this survey.

When you finish with the survey please return it to the Forest Hills School District at the address listed above. After we compile the results, we would be happy to share our findings with you.

1. Age— Male— Female—.

2. List the sports that you coach —.

3. What level do you coach: High School— Junior High— Elementary— Other—.

4. Approximate number of students in your school—.

5. How do you feel about this issue of Jr.-Sr. High School athletes being serious users and abusers of alcohol and other drugs? Where would you place yourself on a scale of one to 10? Place an "X" on the scale below where it would reflect your current feelings about the issue.

(Chart not reproduced in RECORD.)

6. As a coach how do you react to the following statements?

(a) A coach should be a good model for his/her athletes. yes— no—.

(b) A coach should report all violations of the training rules by any member of his/her squad. yes— no—.

If you answered no, please comment here:

(c) When a coach overhears party plans by his/her athletes, the coach should confront the athletes immediately. yes— no—.

7. After you have read the booklet from the Drug Enforcement Administration and have read this packet of information:

(a) Does the program make sense to you? yes— no—.

(b) Are you willing to make a commitment to do something about the use of alcohol and others drugs among student athletes? yes— no—.

(c) If you are willing to make a commitment, how much of a commitment are you willing to make? Please check one blank.

—I would like to make a commitment but . . . I'm not ready to make the commitment at this time.

—I'll do the survey only and see how serious the problem is in my school.

—I'll try a few steps in the suggested plan and see what happens.

—I'm willing to go all the way and start a complete program.

—Other. Please explain.

8. Would you be willing to sign a pledge card (along with your athletes) that you would not use alcohol or others drugs during your sport season? yes— no—.

9. Please list here any suggestions that you have for improving the drug prevention program for athletes that is included in this packet of information.

Thank you for your participation in this survey. Please write or call us if you would like a copy of the result of this survey.

MICHAEL D. HALL,
Coordinator of Athletics.

Mr. METZENBAUM. Mr. President, the fourth component of the model high school drug intervention effort, is student support groups. Students who have similar problems can get together and share their concerns about their own drug use or the drug use of friends or family.

The fifth component is the training of students as peer counselors. At Anderson High School 15 students have had extensive training in a technique called peer group counseling. These high school students will be working with and counseling students in the fifth grades at all Forest Hills Elementary School. This phase of the program is based on the fact that fifth grade students listen better to high school students about certain subjects than they listen to adults.

The school has also established "the room" which is a place where students can go any time during the school day to discuss a problem, drug related or not. The room is staffed by student peer counselors as well as a professional counselor. The peer counseling effort also extends to efforts to combat drunk driving. At Anderson High, a group of 22 students are involved in projects to prevent drunk driving.

The sixth component of the program is a parents communication network which is an organization of concerned parents who support each other in discouraging the illegal use and abuse of chemicals by their children. The group is a network of parent support and communication which develops guidelines and standards to follow.

Mr. President, my amendment simply ensures that programs targeted to student athletes are specified as options for schools and local communities.

The other components of the model program currently in place at Anderson High School in Cincinnati are already contained in this legislation.

Mr. President, it is also my understanding that coaches and athletic directors will be included in the membership of the advisory councils established under section 4006 of the bill.

Mr. CHILES. Mr. President, this amendment will strengthen the emphasis on using athletic directors, coaches, and athletic programs to reduce drug use among student athletes and the student body at large. It will emphasize the need to involve coaches in the training and programs for prevention of alcohol and drug abuse. It is a good amendment.

Mr. THURMOND. Mr. President, in view of the widespread use of drugs among athletes, we believe this amendment would be helpful and we will accept it.

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

The amendment (No. 3074) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. SIMPSON. Mr. President, I have never been to Mandalay and I really do not want to go. [Laughter.]

But I think that Senator REIGLE is about to send me a ticket.

Mr. President, I had two amendments. One was with relation to the reallocation of funds for the INS. I believe we have intruded a bit on Senator RUDMAN's turf.

I think we can get that resolved in the continuing resolution. Therefore, I am not going to propose that amendment.

The other amendment I just would like to speak on a moment without placing it before the body since I am sure that a unanimous consent request that further reading be dispensed with might not be. I do not want to be here that long.

Let me just say that it is not my intent to create difficulty. That is not my wont.

It is or has been my intent to present a vehicle for the consideration of immigration reform that you dealt with very patiently here. Three separate times I have taken you through the jump or the hump of immigration reform. I am not going to do that again next year, if I am chairman or ranking minority member, whatever the status might be.

□ 0050

And that is not a statement of petulance. It is a statement of reality.

The House yesterday, through a procedural effort, really did not allow an up or down vote on immigration reform. Illegal immigration is what we are talking about, not legal immigration. We are talking about the 1.8 million people who cross our borders from 81 different nations and I shall not even go into that. We have been there.

I am just going to speak 2 or 3 minutes and tell my colleagues that it was the intent to present the Senate version of the Immigration Reform Act as an amendment to this. Indeed, it was never my proposal that immigration reform be discussed as a jobs bill or a drug bill. Suddenly, it is linked in. That was not my preference.

Certainly, it is linked in. We find that apprehensions have increased over 50 percent on the southern border. Violent encounters, assaults, a $150 million pickup in a van the other day, three people in a van the week before and a $53 million pickup. That is what it is going to be in the United States of America.

I just share with you, and I understand the intensity of my friend from Michigan when I say that I think we will find if we do not deal with this issue, we will lose our compassion for legal immigration. That is what is going to happen. And we will turn toward true xenophobia and we shall reach the ultimate discrimination. This is the odd thing to me in this situation because I know my friend from Michigan is a true civil libertarian.

There are 3 to 12 million human beings in the United States who are here illegally. They are being used and exploited and this is their only vehicle out of the dark because everyone here knows that we will never grant a separate legalization to these unfortunate people unless we know it is not going to happen again. The way it does not happen again is that we penalize employers who knowingly hire these illegal persons.

That is where we are. I wish it were not that way. So the ultimate discrimination will be the status quo and the status quo is very simple: We will do nothing or we will do something. We will give more money to the INS, more money to the Border Patrol. Then, after the employer has been busted about six times and they have rolled him up and shut his business, he says, "I have got this thing figured out. I am never going to hire anybody again who 'looks foreign'."

That is where this bizarre subject goes, this bill, with the emotion, guilt, fear and racism. I have been there. I shall not take you through the jumps again. This was an attempt to send something to the House which would get them to an up-or-down vote which

they have not had this session, and see whether we go to conference. There is no doubt in my mind we could have an agreement on the Schumer thing if we could get to conference, but that is not to be.

I did want to share with you that was my intent without question. I think the President would sign the legislation that would come out of conference and I shared with you that I am not going to take you through that again. I shall wait until next year and see what the House sends us. Surely they will send something, especially now that we have linked this with a drug issue. That will be a nice little bit of fluidity to the skids on immigration reform. It will help push it along. Now we will see whether that will come to pass.

But when they send me something, we will have immediate hearings, we will proceed with the bill and I pledge that. If there is no way to send it over for an up-or-down vote, I am not going to belabor it or take the time. We are very patient people who, in a very bipartisan way, have passed three times a fascinating illegal immigration addressing-that-issue bill.

With that, I yield to my friend from Michigan. I know he has a comment.

Mr. RIEGLE. I thank the Senator for yielding and I shall be very brief. I have enormous regard for the Senator, as he knows. I think he is one of the best Senators we have. I am sorry that I do not see this issue the same way he does.

I am also concerned about the fact that the drug bill go over unencumbered, because I think there is a very good chance that the House will take the Senate drug bill as is. Time is short. I think it is important that that issue be resolved. I think it is put in some jeopardy if this is added, but quite apart from the objections I would have to aspects of the immigration bill.

I am not sure there is a need to say more at this point.

Mr. SIMPSON. I thank the Senator from Michigan.

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

THE PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, the hour is very late. Everybody on this floor is very tired, but I am going to detain us for just a couple of minutes in order to make a plea. The plea is earnest and arises from a situation that has been timely reported in the public press as being out of control. The border has been described as hemorrhaging.

It is my hope that we can see an immigration reform bill very close to that passed by the Senate become law this year. Because, Mr. President, what the able and energetic Senator from Wyoming has described as his fear is in fact becoming a reality. I can think of nothing sadder, nothing really more tragic than the conversion of good will, bridging a border between good neighbors, turning sour, Mr. President, as the result of the kind of massive illegal immigration that suddenly, in just the time I have been in the U.S. Senate, has transformed my home area of southern California from one where illegal immigration was tolerated somewhat with a wry smile in days past to the point where, today, it has reached a saturation. It is an area where people are afraid as they never were before, where they view illegal aliens suddenly with apprehension. The kind of xenophobia the Senator from Wyoming describes is the ugliest thing I can conceive of in America. It is not an American trait. It is not the kind of thing that any of us can look upon with indifference. There is a certain ugly contagion about it.

Mr. President, what the Senator from Wyoming is telling us is that there is a need for his bill to become law. No; he does not want to take us over the jumps again and none of us wants to go. We know the situation, although I think perhaps those of us who live on the border inescapably have come to the conclusion that we really cannot wait much longer before the situation deteriorates into something very ugly.

This is a nation of immigrants. Ironically, we are the richest, strongest, most resourceful nation in the world precisely for that reason. But no nation, as he has told us many times, can absorb without limit immigration, legal or illegal. I tell you that this year, there will be detected, detained, and apprehended in the San Diego sector of that border alone over 600,000 people. For everyone detained, at least one is getting through.

This is not a situation that can simply be ignored. We cannot simply continue to experience massive hemorrhaging of illegal immigration.

□ 0100

What the Senator from Wyoming has said is that the time has come—some of you may not remember that at my first opportunity I voted against his bill; I really was not certain that it was the answer—I am absolutely certain that the time has come at the very least to test employer sanctions to determine whether or not they can be effective, because, Mr. President, there is not anything, else, and if that does not work and if the Mexican Government does not restrain illegal immigration on their side, then we have very few and very ugly options. So I hope that we listen when the Senator from Wyoming asks our cooperation because time is not on our side. In the time that I have been in the Senate, the situation has reached such a deteriorated stage that I am truly alarmed at what further delay will bring.

So, Mr. President, I will not say more tonight but I earnestly implore the Members of this body to be sensitive to the situation. They do not all live at or near the border, but I think they are sensitive to the kind of America that we want to have, and I think they understand that we are in danger in certain areas of seeing the traditional attitude of American hospitality dissipated and moved to something much different—by fear, by resentment of a kind that is inevitable if unlimited illegal immigration is permitted to continue.

I thank my colleagues for the attention. I hope that that will translate into a sensitivity to the problem and bring some movement. The time for movement is at hand.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER [Mr. BOSCHWITZ]. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to say a word on this matter. This is a bill that came from the Judiciary Committee. We have had hearings on this matter three different years, reported this bill out three different times. It has passed the Senate three different times and gone to the House. I am not too sure when we will get a bill unless we handle it this way. We thought we had a bill last year, and just a few, just a handful of people in the House obstructed and we did not get it. Now, if we put this bill here on the drug bill, then it will go in conference, it will be reported to the whole body and without question I think the whole House will pass it. But if we have to do it piecemeal, as we have done in the past, hold another conference and go through the same thing again—we have been through it three times. This is the best hope of getting a bill—I would hope the distinguished Senator would not oppose this procedure because we have worked hard to get a bill. The distinguished Senator from Wyoming has done a fine job on it. We have about 12 million illegal people in this country and we need to take steps to stop more from coming in. It is not fair for those who would come under a normal quota to be denied entrance and let the others come in illegally. I hope the Senator would think over this carefully and see clear to let us put it on this bill now so it will go to conference so the entire House can vote on it and not have a separate conference. If not, I am afraid it will be thwarted as it has three different times in the past.

Mr. RIEGLE. Mr. President, I just say to the Senator from South Carolina, also for whom I have great regard, that my position has not changed. I do not think this is an appropriate meas-

ure to attach at this hour of the night to this drug bill. I think it would create problems for the drug bill. I happen to have substantive disagreements with aspects of the immigration bill. I opposed it when it passed here before, and so I am just not in a position to agree to it tonight.

AMENDMENT NO. 3075

The PRESIDING OFFICER. The majority leader.

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 3075.

Mr. DOLE. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

To be added in the appropriate interdiction section:

"SEC. . Effective October 1, 1986 and ending September 30, 1987 the number of officers of the Marine Corps authorized under section 525(b)(1) of Title 10, United States Code, to be on active duty in the grade of lieutenant general is increased by one. This authorization of lieutenant general is contingent on a Marine Corps lieutenant general serving as Director of the Department of Defense Task Force on Drug Enforcement."

Mr. DOLE. Let me indicate what this amendment does. During consideration of the DOD authorization bill, the Department of Defense requested and received an overage in the number of general officers in anticipation of an Army lieutenant general filling the job as director of their task force on drug enforcement. The bill's language specifies this overage is for an Army officer only. They have now selected a Marine officer, so I do not think there is any problem with this. I understand it has been cleared on both sides.

Mr. THURMOND. Mr. President, we are willing to accept it.

Mr. NUNN. Will the Senator yield for a question? I do not in any way object to adding a Marine officer, but do you subtract an extra Army officer from that?

Mr. DOLE. It does not subtract, I am advised.

Mr. NUNN. I had made it known earlier that we need to have a subtraction if we are going to have an addition. Otherwise, you have provided an extra Army officer for a job that is no longer in the Army.

The PRESIDING OFFICER. Is there further debate?

Mr. DOLE. Let me check the amendment.

Mr. NUNN. Mr. President, if the majority leader will assure that that technical amendment could be added, we could get unanimous consent later to that the amendment. I think that was the intention and that is what I had discussed earlier.

Mr. DOLE. Let me hold the amendment—somebody else can offer an amendement—and we can do it later.

The PRESIDING OFFICER. Is the majority leader asking unanimous consent to lay the amendment aside?

Mr. DOLE. Yes.

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

AMENDMENT NO. 3076

(Purpose: To authorize the Secretary of Agriculture to expand law enforcement programs necessary to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances on National Forest System lands)

Mrs. HAWKINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Florida [Mrs. HAWKINS] proposes an amendment numbered 3076.

Mrs. HAWKINS. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of title III, add the following new subitle:

SUBTITLE *—NATIONAL FOREST SYSTEM DRUG CONTROL

SEC. 3**1. SHORT TITLE.

This subtitle may be cited as the "National Forest System Drug Control Act of 1986".

"SEC. 3**2. PURPOSE.

(a) The purpose of this subtitle is to authorize the Secretary of Agriculture (hereinafter in this subtitle referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances.

(b) Nothing in this subtitle shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this subtitle, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 3**3. POWERS.

For the purposes of this subtitle; if specifically designated by the Secretary and specially trained, not to exceed 500 officers and employees of the Forest Service when in the performance of their duties shall have authority within the boundaries of the National Forest System to—

(1) carry firearms;

(2) conduct investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has reasonable grounds to believe are being committed in his presence or view, or for a felony with or without a warrant if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. 3**4. COOPERATION.

For the purposes of this subtitle, in exercising the authority provided by section 3**3—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed; and

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, both within and outside the boundaries of the National Forest System.

SEC. 3**5. PENALTY.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding to the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more then 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached."

SEC. 3**6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $20,000,000 for each fiscal year to carry out this subtitle.

SEC. 3**7. APPROVAL OF SECRETARY OF AGRICULTURE AND ATTORNEY GENERAL.

The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

Mrs. HAWKINS. Mr. President, the amendment I am offering today addresses a problem that threatens the safety of the thousands of Americans who visit and work in our national forests, it is the problem of marijuana

cultivation on the national forests by a ruthless criminal element. My amendment would give the Forest Service the tools necessary to attack this threat including new authority to investigate and enforce violations of the Controlled Substance Act and clarification of current Forest Service law enforcement authorities including the right to carry firearms and serve and process warrants. The need for this amendment is dramatically pointed out by reports I have received of recent incidents on national forests.

Mr. President, the growing season for cannabis is almost over. The Forest Service will not be able to compile new statistics for calendar year 1986 for some-time. Nonetheless, even a cursory look at some of the figures compiled by the Forest Service for 1985 will illustrate the scope of this problem.

Last year on one particular national forest, some 269 garden plots of cannabis or marijuana were known to have been planted by so-called growers. These plots were known to have yielded 25,550 plants. Forest Service records for this same forest also revealed that 39 arrests, 41 weapons, and 9 boobytraps were associated with illegal cannabis activities. Further, cannabis growers were known to have fired upon law enforcement personnel employing helicopters for surveillance on four separate occasions, and growers were known to have fired 17 shots at law enforcement personnel.

Even more alarming than these stark statistics is the fact that cannabis growers are commonly using boobytraps and other homemade weapons to protect their plots. These devices, although often crudely built, have one purpose and one purpose only and this is injure, maim, or even kill. For example, these boobytraps range from a rattrap shotgun shell type, which was designed to fire if the trap was set off, to fishhooks strung out with monofilament line to injure anyone making contact.

Other serious effects recorded by the Forest Service in the examples I am citing include the following: At least three fires where known to have been started by these growers. A conservation estimate of five trees—over 6" DBH—per garden for a total of 1,345 trees were cut down by cannabis growers. The growers cut the trees because plots need sunlight to reach the plants, even while a certain degree of camouflage is required, and because the growers usually construct some type of shelters.

Wilderness areas are not immune from these activities. In fact, the Forest Service indicates that roadless areas, as well as roads closed for wildlife protection, have become increasingly attractive to cannabis growers for use as garden sites. In some instances, growers go into wilderness areas with4-wheel vehicles, three-wheel ORV's, and motorcycles.

Wildlife is especially vulnerable. Over 200 cases of wildlife violations were observed by the Forest Service. Every garden in this instance had two or more methods of killing animals coming onto or ranging near cannabis plots. Large rattraps were the most common with an average of one plus rattraps per plant.

Many gardens had two traps per plant. Also three dozen steel leghold traps were removed, and the poison Decon and other brands were present in almost every garden plot including poison bait. One grower with 325 plants had put out five cases of rattraps and three cases of Decon. That grower had placed traps not only in the garden plot but up to 100 feet around the outside perimeter, too.

Water sources are also impacted. Growers deposit into streams, both directly and indirectly, a wide variety of fertilizers, insecticides, rat and deer poisons, human waste, detergents, and remains of animals killed.

Finally, Mr. President, there are the dangers posed to innocent and unaware visitors, private contractors engaged in legitimate business activities, and Forest Service employees trying to carry out their land management responsibilities. In this particular example, the Forest Service recorded approximately two dozen complaints from recreationists who suddenly found themselves in or near an area of cannabis activity.

One very close call occurred when a deer hunter stumbled onto a cannabis garden and camp. He was confronted by armed men and also very nearly set off a boobytrap. Officers found that the tripwire was attached to a trap armed with a 12-gauge shotgun shell.

Mr. President this amendment inflects changes brought about by several days of negotiation.

The amendment provides for new enforcement authorities for the Forest Service. These enforcement authorities are limited to preventing the cultivation of marijuana on national forest lands. Further, this amendment provides that those employees of the Forest Service must be specially trained; specially designated for the purpose of the act.

The amendment limits Forest Service enforcement and investigatory activities to within the boundaries of the National Forest System lands.

Finally, the amendment has been modified to require any authorities conferred on the Forest Service to be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

In its modified form the amendment is supported by the administration.

I understand that the amendment is acceptable to the distinguished managers on both sides. I ask for its adoption and thank my colleagues for their support.

Mr. BIDEN. That is correct.

Mr. CHILES. We have cleared it on this side.

Mr. THURMOND. Mr. President, we have no objection.

Mr. HELMS. Mr. President, I strongly support the amendment offered by the distinguished Senator from Florida [Mrs. HAWKINS].

Mr. President, this amendment expressly addresses the problem of marijuana production of our national forest lands. It is estimated, Mr. President, the marijuana grown in the National Forest System accounts for 20 to 30 percent of all the marijuana grown in the United States; this is a substantial increase from 5 percent in 1980.

Not only is more marijuana originating from our National Forest System, but also the nature of marijuana cultivation has taken a sinister turn. The marijuana plots and plantations we now find on our public lands are no longer tended by a few solitary hippies. Instead these illicit operations are increasingly sophisticated and large in scale, and their caretakers have proven extremely dangerous to innocent people who stumble across their path.

Mr. President, the marijuana crop being produced is of higher quality than in the past, and of greater value. For this reason, cultivators have turned increasingly dangerous, and employ more sophisticated growing techniques. The GAO, in a November 1984 report, confirmed this shift toward increased sinsemilla production, a marijuana product which yields higher levels of the psychoactive, element, THC. The GAO went on to report that the successful marijuana grower could garner $3,350 from a single sinsemilla plant. Law enforcement officials, using various values ranging from $1,000 per plant to $2,500, would price a healthy plot of 150 plants at between $150,000 to $375,000.

Unfortunately, the element of danger posed by the marijuana grower is proportional to the value of his crop. The trend toward violence by these criminals is up, and they employ the most brutal means to safeguard their illegal crop. The Forest Service has reported a bewildering array of booby traps associated with the marijuana plots. These dangerous devices include pipe bombs, punji pits, shotgun shell booby traps, guard dogs, and fishing hooks dangled at eye level from monofilament lines. So insidious are these devices and the criminals that deploy them, that according to George Dunlop, Assistant Secretary of Agriculture for Natural Resources and Environment, who oversees the Forest Service, on close to a million acres of

national forest lands' normal recreation and land management activities have been severely affected. In a Washington Post article, September 25, 1986, Ward Sinclair reported that in the Klamath National Forest a path of marijuana was discovered, "with individual plants wired to explosives that would detonate if the plants were touched."

Mr. President, I ask unanimous consent that the Washington Post article by Ward Sinclair be included in the RECORD following my statement.

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

(See exhibit 1.)

Mr. HELMS. In a September 30, 1982, hearing before a subcommittee of the Agriculture Committee, chaired by Senator S.I. Hayakawa, the Forest Service indicated its concerns with marijuana production were threefold: First, and most important, is the threat posed to law-abiding citizens using the national forests, and the Forest Service employees. Second, these marijuana plantations adversely affect the surrounding environment by the associated indiscriminate use of pesticides and herbicides, and third, these illegal operations conflict with the Forest Service's ability to properly manage these lands.

As the situation now stands, the Federal Government and the American taxpayer, through ownership of these national forest lands, are the unwitting accomplices to the criminal marijuana grower. The marijuana cultivator has every reason to use our public lands for growing his illegal crop. Generally, these lands are remote, and enforcement authorities cannot seize these lands as they would private property, and of course it is more difficult to link a marijuana patch on public lands to the identity of the grower.

Mr. President, clearly we cannot tolerate this situation. This amendment will put a stop to the flood of marijuana that corrupts our moral fiber, threatens our health, and ruins the potential of our country's children. This amendment provides the U.S. Forest Service the authority to aggressively halt the production of marijuana and other dangerous drugs now taking place in our National Forest System.

Specificially, Mr. President, the amendment will permit the Secretary of Agriculture to designate a limited number of well-trained Forest Service employees to investigate and enforce laws relating to the production and processing of illicit drugs. While performing their drug enforcement duties these well-trained employees could carry firearms, serve and process warrants, and search and seize without a warrant.

This legislation would also amend the Controlled Substances Act so that criminals employing booby traps to protect their drug plots or drug processing facilities could receive severe prison sentences and/or fines.

Now, Mr. President, some of my distinguished colleagues have expressed concerns that this amendment grants the Forest Service far-reaching powers that may prove coercive. Specifically, some fear the authority that permits the Forest Service to enforce drug laws on private lands adjacent to national forest lands. Let me explain the need for this authority. Often our national forests are not solid continuous blocks of public land. Instead private lands are often interspersed among national forest lands, and criminals often use this to their advantage by growing the marijuana on public land and supporting the process from adjacent private lands, or vice versa. Also, Mr. President, this amendment focuses strongly on the cooperative aspects of drug enforcement. The Secretary of Agriculture would be required to cooperate with other Federal law enforcement agencies.

Let me conclude with the reassurance that only specially trained and specifically designated Forest Service personnel would carry firearms, serve warrants, conduct searches and seizures, and enforce title 21 of the Controlled Substances Act. Before assuming their duties, these employees would receive special training such as now is provided to many other law enforcement authorities at the Federal Law Enforcement Training Center at Glynco, GA.

Mr. President, it utterly confounds me that criminals have so successfully used our public lands to grow their poisonous crop, and not only do they profit at our expense, they also prevent the public from safely using these lands. If a private landowner allowed criminals to grow marijuana on his land, that landowner could be arrested and/or his property seized. It's about time the Federal Government assume the same responsibilities we expect of private landowners.

Mr. President, let me reiterate that it has been estimated that about 30 percent of all marijuana in the United States is produced on Forest Service land.

At the present time, officials' hands are tied in going after the massive violations of our laws on Forest Service lands.

Indeed, almost 1 million acres have been declared off limits to the general public because of the danger in some of these—generally remote—areas where drugs are grown.

If we want to reduce the availability of drugs to our Nation's young people, we need to go after the source. And, unfortunately, one of the primary sources is in our national forests.

The 500-person team authorized by the legislation is a small, but significant, effort in light of the overall number of Forest Service personnel numbering 40,000.

Mr. President, essentially this amendment would bring the Forest Service up to the same level of law enforcement authority in drug-related cases that is already quite common in other areas of the Department of Agriculture and within the National Park Service of the Department of the Interior.

For instance, Mr. President, the Office of Inspector General was authorized in the 1981 farm bill to have arrest and firearms authority in the investigation of various crimes under USDA statutes. These have involved primarily food stamp trafficking cases and certain meat inspection cases. Additionally, tick eradication officers have been given firearms authority because of the occasional danger posed by their inadvertent discovery of armed illegal aliens.

Certainly the hazard to Forest Service employees is at least as dangerous as these other serious instances which have necessitated arrest and firearms authority.

Additionally, the National Park Service has broad authority for a wide range of arrest authority on national park lands.

This amendment establishes such authority for Forest Service employees only in the cases involving prevention of the manufacture, distribution, or dispensing of marijuana or other controlled substances.

I have heard from various Forest Service employees on the frontlines who would welcome this authority, and I believe the Senate should convey this limited authority in an effort to preserve our national forest lands.

Mr. President, I want to emphasize that the authority for Forest Service personnel to engage in these antidrug activities is limited to personnel specifically designated by the Secretary of Agriculture and specially trained for these law enforcement activities.

Additionally, these authorities are conveyed only when they are "in the performance of their duties."

Mr. President, I also think it should be understood that the primary reason that Forest Service personnel would have law enforcement authority outside of the boundaries of the Forest Service lands would be to pursue persons who had engaged in illegal activities on Forest Service lands. This is commonly known as a doctrine of hot pursuit.

For instance, many Forest Service lands are in remote areas and are contiguous to private lands. Such criminals might flee Forest Service lands, and, of course, law enforcement agents of the Forest Service should be able to pursue them.

Additionally, occasions may arise when other participants in the drug-related violations will need to be apprehended. The Forest Service is required to cooperate with other law enforcement authorities with primary jurisdiction over such violations in these cases.

Mr. President, the provision also specifies that the designation of personnel to exercise these authorities is to be made pursuant to an agreement approved by both the Secretary of Agriculture and the Attorney General of the United States.

A similar requirement is in effect for the authority granted to the Office of Inspector General of the Department of Agriculture. Under that authority—(granted in the 1981 farm bill, P.L. 97-98—the Attorney General has 30 days in which to disaprove any designation of the Inspector General. It would be the expectation that a similar disapproval period would be established for the Attorney General to respond expeditiously to the Secretary's request for such authority. Obviously, with the present Attorney General, I feel certain that all means of cooperation will be followed. I should also note that it is expected that this approval authority would not be delegated to agency heads, but would remain with the Attorney General. I am concerned that we not develop any type of turf battle with agencies such as the Drug Enforcement Agency within the Justice Department. We want an expansion of drug enforcement efforts, not competition between jealous agencies.

EXHIBIT 1

USDA SEEKS ARMED TEAMS TO RID FORESTS OF DRUG CROP

(By Ward Sinclair)

Marijuana growers have taken over almost 1 million acres of the national forest system, forcing an outgunned and intimidated Agriculture Department to declare the tracts "unmanageable" and to close them to the public.

As a result, the USDA is asking Congress to authorize the arming of special teams of U.S. Forest Service agents and give them sweeping powers against marijuana growers.

The intent, according to George S. Dunlop, the assistant secretary of agriculture who oversees the Forest Service, is to give the agency more muscle to deal with marijuana growers, who are increasingly apt to protect their pot patches with guns, booby traps, land mines and attack dogs.

"The problem is getting to be nationwide," Dunlop said, "but it is most severe in California. North Carolina, Arkansas, Florida and Missouri are other areas with the most serious problems. . . . Because our enforcement powers are limited, the forests have become a safe haven for these people."

"Our present enforcement activity is limited to eradicating the marijuana plants—we go in and rip them up. But that is not working," Dunlop added. "When a forest supervisor finds booby traps or guard dogs, he says, 'We won't manage that area or let the public into the area.' "

Dunlop said an increase in marijuana growing by "a dangerous criminal element" has forced the Forest Service to close 946,000 acres of its 191 million-acre system.

The assistant secretary said the Forest Service relies on state and local police agencies for enforcement help. But he said Forest Service employes have been injured in shootouts and that some of them, although not empowered to do so, occasionally have used firearms to defend themselves.

Dunlop agreed that the USDA could use other federal drug enforcers to help regain control of the forests. But he said giving the Forest Service new enforcement powers would "assure that any activity is done consistent with our forest management role . . . so we don't turn Smokey the Bear into a law enforcement agent."

Paul Steensland, a Forest Service law enforcement official in San Francisco, said there has been occasional violence in an area of California known as the "Emerald Triangle," which covers national forest in Humboldt, Trinity and Mendocino counties and is the largest illicit growing area in the forest system.

Steensland said the shooting of a ranger and the burning of two guard stations in Shasta-Trinity National Forest led to the formation of a team of Forest Service agents and sheriff's deputies who have "recaptured" about 40,000 acres once deemed unmanageable.

"We finally said 'no more' after those incidents, and the effort has been successful," Steensland said.

In the adjacent Six Rivers National Forest in Humboldt County, Steensland said, the team this year has seized 6,000 marijuana plants, arrested 12 growers and confiscated 16 firearms. But the growers are persistent. A marijuana patch was found this week, near a road in the Klamath National Forest, with individual plants wired to explosives that would detonate if the plants were touched, Steensland said.

According to Dunlop, an estimated 20 percent of the dolomestic marijuana crop is produced in forest areas deemed "out of control" and too dangerous for the public and forest rangers to enter.

The USDA's figures show that in 1980, marijuana was being grown on 220,000 acres of Forest Service land. By last year, 946,000 acres were involved and Forest Service rangers destroyed marijuana plantings at 2,692 sites. Eradication work cost the agency $830,000 last year, compared to $96,000 in 1981.

A bill drafted by the USDA at the request of Senate Agriculture Committee Chairman Jesse Helms (R-N.C.) would empower the USDA to create special drug enforcement teams. It would establish fines and prison terms for possession of firearms or the use of dangerous devices such as booby traps related to marijuana growing or other illegal drug-related activities in forests.

Dunlop said the Reagan administration has not given its formal approval to the proposal, which was introduced this month by Sen. Paula Hawkins (R-Fla.).

Under the bill, the secretary could designate Forest Service employees to carry firearms; serve and process warrants; make arrests, searches and seizures without warrants. The secretary could extend these powers to other unspecified federal employees to assist the Forest Service.

Forest Service agents could pursue suspects outside the boundaries of the national forests and independently investigate violations of forestry laws and regulations.

Although the bill was referred to Helms' Agriculture Committee for action, a committee spokesman said the Forest Service plan probably will be included in a Senate version of broad new drug-enforcement legislation adopted by the House earlier this month.

Mr. DOLE. Has the amendment of the Senator from Florida been adopted?

The PRESIDING OFFICER. Not yet. The question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 3076) was agreed to.

Mr. DOLE. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

□ 0110

Mr. DOLE. Mr President, the pending business is my amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I am advised by the distinguished Senator from Georgia that there is no problem with the amendment.

Mr. NUNN. Under the statutory provisions, the slot I was concerned about would be automatically eliminated.

Mr. DOLE. That is my understanding.

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

The amendment (No. 3075) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3077

(Purpose: To provide a mandatory minimum sentence for juvenile drug traffickers)

Mr. LEVIN. Mr. President, I send an amendment to the desk on behalf of myself and Senator DECONCINI.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself and Mr. DECONCINI, proposes an amendment numbered 3077.

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

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

The amendment is as follows:

An amendment to Section 1102 of H.R. 5484 by striking all after the word "by" on line 23, page 19 through the word "offense" on line 1, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b) of this title, or twice the fine authorized by

section 401(b) of this title, or both, and at least twice any special parole term authorized by section 401(b) of this title for a first offense."

H.R. 5484 is amended in section 1102 by striking all after the word "by" on line 5, page 20, through the word "section" on line 10, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b) of this title for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this title for a first offense under that section."

H.R. 5484 is further amended by adding a new section 1105 as follows: "section 405 of the Controlled Substances Act is further amended by striking in paragraph (a) all after the second word "by" and inserting lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), a fine up to twice that authorized by section 401(b) or both."

H.R. 5484 is further amended by adding a new section 1106 as follows: "Section 405 of the Controlled Substances Act is amended by striking in paragraph (b) all after the second word "by" and adding the following in lieu thereof: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b), and a fine of up to three times that authorized by section 401(b), or both. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

H.R. 5484 is further amended by adding a new section 1108 as follows: "Section 405A of the Controlled Substances Act is amended by striking all after the second word "by" and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), a fine up to twice that authorized by section 401(b) or both; and (2) at least twice any special parole term authorized by section 401(b) for a first offense involving the same controlled substance and schedule. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

Mr. LEVIN. Mr. President, the amendment is straightforward. I understand it has been agreed to by both sides.

The amendment would require that any person convicted of an offense involving the distribution of drugs to children, the manufacture or distribution of drugs near schools, or the employment or use of children to distribute drugs would face a mandatory minimum of a year in prison. All other penalty provisions would be unaffected in the pending bill.

I note that this amendment relates only to distribution of drugs, and it relates to offenses involving children or schools. Unfortunately, there is no provision that would require mandatory minimum penalties for a certain offense involving distribution of controlled substances such as heroin and crack to children, and this amendment would fill that gaping hole.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. CHILES. We accept the amendment.

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

The amendment (No. 3077) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3078

(Purpose: To provide for the inclusion of certain drug-related information on passports)

Mr. HELMS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3078:

At an appropriate place in the bill, add the following:

SEC. . The first section of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 211a) is amended by adding at the end thereof the following:

"The Secretary of State shall prescribe such regulations as shall be necessary to establish procedures for indicating on passports issued by the United States the fact that the holder of such passport has been convicted of an offense under a Federal or State law relating to controlled substances or has been assessed a fine or civil penalty or has incurred a forfeiture under any Federal or State law relating to controlled substances.".

Mr. HELMS. Mr. President, I discussed this amendment earlier with the distinguished managers of the bill, the chairman and Mr. BIDEN.

This amendment would require a special identifying mark in the passports of those who have been involved in drug offenses under Federal or State law. With such a mark in their passports, individuals who have a history of drug offenses can then be carefully scrutinized by the Customs Service as they reenter the United States from abroad. This requirement, I believe, will be a powerful deterrent against further drug crimes by previous offenders.

Mr President, it has been reported to me that more than 289 million people entered the United States in 1985. U.S. Customs officials are faced with the difficult task of identifying those persons engaged in international transportation of narcotics and dangerous drugs. To this end, they have developed methods of identifying violators based on their appearance, actions, or documentation in their possession.

My amendment, Mr. President, would give Customs officials a new and effective tool in identifying potential drug violators.

Mr. President, it is my intention that this amendment authorize and require the Secretary of State not only to mark newly issued passports but to recall existing passports and mark them as drug-related convictions occur. This second feature obviously will take a major effort by the State Department, but I believe the results will justify the effort. As to the details of carrying out the marking of passports proposed, the amendment leaves them to the discretion of the Secretary of State.

I urge adoption of the amendment.

Mr. BIDEN. Mr. President, it is true that the Senator from North Carolina did indicate to me earlier this evening his intention to move this amendment. At first blush, it seemed very appealing to me, and I told the Senator at that time that I was inclined to look favorably on it. I later told him I could not support it.

Let me suggest, first of all, that I truly commend the Senator for what he is attempting to do here. But this is like having a magic wand to find out who are the major drug dealers in the country and those from abroad as they pass through our borders.

The problem is that most dealers do not have legal passports. They have false passports, to begin with. The major dealers in this country who are American citizens or foreign nationals travel under false passports. So it would not get those folks.

Second, the concern I have here is that the amendment says: "convicted of an offense under a Federal or State law relating to a controlled substance or has been assessed a fine or a civil penalty."

My concern is that we have a notion in this country that once one is convicted of a crime and serves their time, society, with rare exceptions, other than those cases where there are jobs requiring certain security clearance or where there is a requirement that exceeds something related to the particular nature of the crime, we treat them as if they have served their time. They have in fact paid their penalty, their price to society, and are whole again.

The problem here is that not only would it not require a criminal offense, but if there had been a civil penalty imposed, it would be stamped on the passport. From that moment on, the passport, the official means by which people are able to ingress and egress their own country—they would be a marked person for the rest of their life.

First, it seems to me not to solve the problem, which is the well-intended aim of the Senator from North Carolina, which is to get at these people who are flying back and forth and trafficking in drugs. Second, it would violate the basic assumptions upon which we

have allowed our criminal justice system to function and the way we treat people under our laws once they have served their time.

Last, it does not guarantee that there would be equal application. As the Senator from North Carolina may or may not know, not all of the State offenses are automatically plugged into the Federal keyboard, so to speak, so that there would be many times when the Secretary of State, who is the one in charge of this, establishing the procedures—there would be times when somebody is convicted in a State and those records have been moved up to the Federal level and they might have this on their passport; and someone convicted of a more heinous crime in the area of drugs would not have it on their passport.

The last thing I suggest to my colleagues is that we are in a situation where right now the Federal Government, the agents of the Federal Government, have access to computers that they can punch out to, in effect, identify those people who are known traffickers and who are major traffickers in the business.

□ 0120

Those people are repeated offenders, those people who we are seeking to get to.

I would suggest that, and I respectfully make this suggestion, maybe the Senator from North Carolina would be willing to work with the Senator from Delaware, and others, like Senator DECONCINI, who have expressed interest in this area and Senator HAWKINS and others, to work out a system whereby we are able to have the Federal Government and the Federal agencies involved get greater and quicker access to records of individuals who are brought under suspicion.

When someone is trying to transit the border there are many times the customs agents have concern and wonder about the person, because of a suspicious nature, because, of some action they take or do not take, to be able to punch up that person rapidly and determine whether or not they are either out on bail, they are in fact fugitives from the law, they are in fact known traffickers, one thing. But to carry like a scarlet letter on your passport the rest of your life, the notion that you are a drug dealer which would be the implication or you are a convicted drug felon, it would not even say that. If you had a civil penalty, the scarlet letter would be pasted on the passport and the passport to America is as close to a sacred document as one can get. It is something that is revered, something that means a great deal, something that is with them for the rest of their life.

So I would suggest, and I say this respectfully to my colleague from North Carolina, that maybe he would consider withdrawing the amendment so that could work out a means by which we could more appropriately get at what I know he intends to do, and that is to identify people.

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

Mr. BIDEN. I yield for a question, yes.

Mr. EAGLETON. Does the amendment of the Senator from North Carolina, as the Senator reads it, differentiate between a crime, shall we call it, of greate severity and a civil penalty insofar as the mark which will be affixed on the passport?

Mr. BIDEN. The answer is, and the Senator from North Carolina would be better able to answer, on the face of it it clearly does not do that. I say one more thing you would be able to if you were convicted of having two grams of marihuana when you were 19 years old, which is not something to take lightly, I am not suggesting, or you would now have this scarlet letter on your passport, but if you had been a convicted murderer who had been paroled and then given a passport, you would not have that on your passport.

Mr. EAGLETON. Mr. President, will the Senator yield for another question?

Mr. BIDEN. I surely will.

Mr. EAGLETON. Is the Senator aware that in many States civil penalties for controlled substance violations, civil penalties I emphasize, are sometimes as low as $25, $50, and $100?

Mr. BIDEN. The Senator from Delaware is aware of that.

Mr. EAGLETON. Is the Senator from Delaware aware that aggregate parking meter violations in the District of Columbia sometimes can exceed $100?

Mr. BIDEN. Not from experience, I am not awared of it.

Mr. EAGLETON. I have it only by hearsy.

And the Senator from Delaware is aware that under the Helms proposal a murderer is not branded with the scarlet letter, a kidnaper who has his passport restored is not so branded, and embezzler is not so branded, but here in this Helms amendment even for a civil penalty as low as $25 or $50 he is branded.

Now, since I have used the word "branded," I just wonder out loud to the Senator from Delaware and within earshot to the Senator from North Carolina: would it not be better if he would just brand them on their forehead, in the manner of cattle, and then not have to deal with the passport document at all?

Mr. BIDEN. I say to my friend from Missouri that I do not think that is really what the Senator from North Carolina is attempting to do.

I think what he is attempting to do is a serious effort to deal with the genuine problem, the genuine problem in that we have known traffickers who, in fact, are transiting the border without us having any access to determine what their background or their business is.

I just would suggest that I do not believe as well intended as the Senator is that this amendment accomplishes that, and quite frankly, I think it goes well beyond that point.

So I say to my friend from North Carolina, I would have to object to the amendment and urge my colleagues to vote against it, but I hope he considers maybe taking the amendment down to see if we could work out something dealing with what is a real problem which is a lack of access of information for INS officers or customs officers of the nature that they should have available to them, in the opinion of the Senator from Delaware.

Mr. HELMS. The Senator makes a reasonable proposition. At least, the Senate has considered it for these brief moments. Maybe we ought to have a brand on Senators' foreheads who talk too much. We might consider that.

Mr. GRAMM. We would need 100.

Mr. HELMS. But the proposition is not to brand anybody. It is to help the customs people who had to deal with 289 million people last year.

Now, anybody in his right mind who believes they are going to punch up on a computer, even if they have one, 289 names, is out of his mind.

I am perfectly willing to work out something that will be reasonable and feasible.

But I do not accept ridiculing of a legitimate idea. I do not like it and I do not do that to other Senators when they offer amendments.

But since the Senator has made a gracious offer, I will accept it and I will withdraw the amendment with the understanding that we work on the prospects of accomplishing something like this.

Mr. BIDEN. I say to the Senator, and I appreciate that, I hope he did not think I was ridiculing him.

Mr. HELMS. I was certainly not talking about the Senator from Delaware.

Mr. BIDEN. What I do not want to do, though, is I do not want to hold out the notion that we can work this out this evening on this bill.

Mr. HELMS. Oh, no.

Mr. BIDEN. I make a commitment I do not. I say to the majority leader, having apoplexy, I say I am not seeking that.

I do suggest if it is agreeable to the Senator, I commit to the Senator that I will as a member, as either a ranking member or probably ranking member of the Judiciary Committee—even were I the chairman, I would be the ranking member, as long as Senator

THURMOND is there—I think it is something we should hold hearings on. We have touched on it and I promised the Senator from North Carolina I will work with him and try to work something out.

Mr. HELMS. Fair proposition.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The Senator from North Carolina withdraws his amendment. The amendment is withdrawn.

AMENDMENT NO. 3079

(Purpose: To establish the American Conservation Crops)

Mr. MATHIAS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. MATHIAS] for himself and Mr. MOYNIHAN proposes amendment number 3079.

Mr. MATHIAS. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the bill insert the following new subtitle:

Subtitle * —American Conservation Corps Act of 1986

SECTION *01. SHORT TITLE.

This subtitle may be cited as the "American Conservation Corps Act of 1986".

SEC. *02. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) conserving or developing natural and cultural resources and enhancing and maintaining environmentally important lands and waters through the use of the Nation's young men and women is beneficial not only to the youth of the Nation by providing them with education and work opportunities but also for the Nation's economy and its environment; and

(2) through this work experience opportunity, the Nation's youth will further their understanding and appreciation of the natural and cultural resources in addition to learning basic and fundamental work ethics including discipline, cooperation, understanding to live and work with others, and learning the value of a day's work for a day's wages.

(b) PURPOSE.—It is the purpose of this subtitle to—

(1)(A) enhance and maintain conservation, rehabilitation, and improvement work on public lands and Indian lands,

(B) improve and restore public lands and Indian lands, resources, and facilities,

(C) conserve energy, and

(D) restore and maintain community lands, resources, and facilities;

(2) establish an American Conservation Corps to carry out a program to improve, restore, maintain, and conserve these lands and resources in the most cost-effective manner;

(3) assist State and local governments and Indian tribes in carrying out needed public land and resource conservation, rehabilitation, and improvement projects;

(4) provide for implementation of the program in such manner as will foster conservation and the wise use of natural and cultural resources through the establishment of working relationships among the Federal, State, and local governments, Indian tribes, and other public and private organizations; and

(5) increase (by training and other means) employment opportunities for young men and women including, but not limited to, those who are economically, socially, physically, or educationally disadvantaged and who may not otherwise be productively employed.

SEC. *03. DEFINITIONS.

For purposes of this subtitle:

(1) The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by any agency or instrumentality of a State or local government.

(2) The term "program" means all activities carried out under the American Conservation Corps established by this subtitle.

(3) The term "program agency" means any agency designated by the Governor to manage the program in that State, and the governing body of any Indian tribe.

(4) The term "Indian tribe" means any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes which is subject to restrictions on alienation imposed by the United States.

(7) The term "employment security service" means the agency in each of the several States with responsibility for the administration of unemployment and employment programs, and the oversight of local labor conditions.

(8) The term "chief administrator" means the head of any program agency as that term is defined in paragraph (3).

(9) The term "enrollee" means any individual enrolled in the American Conservation Corps in accordance with section *05.

(10) The term "crew leader" means an enrollee appointed under authority of this subtitle for the purpose of supervising other enrollees engaged in work projects pursuant to this subtitle.

(11) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) The term "economically disadvantaged" with respect to youths has the same meaning given such term in section 4(8) of the Job Training Partnership Act.

SEC. *04. AMERICAN CONSERVATION CORPS PROGRAM.

(a) ESTABLISHMENT OF AMERICAN CONSERVATION CORPS.—There is hereby established an American Conservation Corps.

(b) REGULATIONS AND ASSISTANCE.—Not later than 120 days after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture, after consultation with the Secretary of Labor, shall jointly promulgate the regulations necessary to implement the American Conservation Corps established by this subtitle. Within 30 days after the enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture shall establish procedures to give program agencies and other interested parties, including the public, adequate notice and opportunity to comment upon and participate in the formulation of such regulations. The regulations shall include provisions to assure uniform reporting on the activities and accomplishments of American Conservation Corps programs, demographic characteristics of enrollees in the American Conservation Corps, and such other information as may be necessary to prepare the annual report under section *10.

(c) PROJECTS INCLUDED.—The American Conservation Corps established under this section may carry out such projects as—

(1) conservation, rehabilitation, and improvement of wildlife habitat, rangelands, parks, and recreational areas;

(2) urban revitalization and historical and cultural site preservation;

(3) fish culture and habitat maintenance and improvement and other fishery assistance;

(4) road and trail maintenance and improvement;

(5)(A) erosion, flood, drought, and storm damage assistance and controls,

(B) stream, lake, and waterfront harbor and port improvement, and

(C) wetlands protection and pollution control;

(6) insect, disease, rodent, and fire prevention and control;

(7) improvement of abandoned railroad bed and right-of-way;

(8) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(9) reclamation and improvement of strip-mined land; and

(10) forestry, nursery, and silvicultural operations.

(d) PREFERENCE FOR CERTAIN PROJECTS.—The program shall provide a preference for those projects which—

(1) will provide long-term benefits to the public;

(2) will instill in the enrollee involved a work ethic and a sense of public service;

(3) will be labor intensive; and

(4) can be planned and initiated promptly.

(e) LIMITATION TO PUBLIC LANDS.—Projects to be carried out by the American Conservation Corps shall be limited to projects on public lands or Indian lands except where a project involving other lands will provide a documented public benefit as determined by the Secretary of the Interior or the Secretary of Agriculture. The regulations promulgated under subsection (b) shall establish the criteria necessary to make such determinations.

(f) CONSISTENCY.—All projects carried out under this subtitle for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with the provisions of law and policies relating to the management and administration of such lands, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of the area.

(g) APPLICATION PROCEDURES.—(1) Each program agency may apply for approval to participate in the American Conservation Corps under this subtitle.

(2) Applications for participation in the American Conservation Corps on Federal

public lands shall be submitted to the Secretary of the Interior or the Secretary of Agriculture in such manner as is provided for by the regulations promulgated under subsection (b). Applications for participation in the American Conservation Corps on non-Federal public lands or Indian lands shall be submitted to the Secretary of the Interior. Applications for participation in the American Conservation Corps on projects on lands described in subsection (e) shall be submitted to the Secretary of Agriculture or the Secretary of the Interior as the case may be. No application may be submitted to the Secretary of the Interior or the Secretary of Agriculture before the 30-day period for review and comment by the appropriate State Job Training Coordinating Council (established under the Job Training Partnership Act), if any, which shall consult with the appropriate Private Industry Council, or Councils, in the area in which a project is carried out. Comments of the State Job Training Coordinating Council and Private Industry Council shall be forwarded to the Secretary at the time the grant application is submitted.

(3) Each application under this section must be approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, and shall contain—

(A) a comprehensive description of the objectives and performance goals for the program, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided;

(B) a plan to make arrangements for certification of the training skills acquired by enrollees and award of academic credit to enrollees for competencies developed from training programs or work experience obtained under this subtitle;

(C) an estimate of the number of enrollees and crew leaders necessary for the proposed projects, the length of time for which the services of such personnel will be required, and the services which will be required for their support;

(D) a description of the location and types of facilities and equipment to be used in carrying out the programs; and

(E) such other information as the Secretary of the Interior and the Secretary of Agriculture shall prescribe.

(4) In approving the location and type of any facility to be used in carrying out the program, the Secretary of the Interior and the Secretary of Agriculture shall give due consideration to—

(A) the proximity of any such facility to the work to be done;

(B) the cost and means of transportation available between any such facility and the homes of the enrollees who may be assigned to that facility;

(C) the participation of economically, socially, physically, or educationally disadvantaged youths; and

(D) the cost of establishing, maintaining, and staffing the facility.

Every effort shall be made to assign youths to facilities. as near to their homes as practicable.

(5)(A) Every program shall have sufficient supervisory staff appointed by the chief administrator which may include enrollees who have displayed exceptional leadership qualities.

(B) No project shall be undertaken without the on-site presence of knowledgeable and competent supervision, and all projects undertaken shall be documented in advance in an approved written project plan.

(h) LOCAL PARTICIPATION.—Any State carrying out a program under this subtitle shall provide a mechanism under which local governments and nonprofit organizations within the State may be approved by the State to participate in the American Conservation Corps.

(i) AGREEMENTS.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(j) JOINT PROJECTS.—

(1) DEPARTMENT OF LABOR.—The Secretary of the Interior and the Secretary of Agriculture are authorized to develop jointly with the Secretary of Labor regulations designed to allow, where appropriate, joint projects in which activities supported by funds authorized under this subtitle are coordinated with activities supported by funds authorized under employment and training statutes administered by the Department of Labor (including the Job Training Partnership Act). Such regulations shall provide standards for approval of joint projects which meet both the purposes of this subtitle and the purposes of such employment and training statutes under which funds are available to support the activities proposed for approval. Such regulations shall also establish a single mechanism for approval of joint projects developed at the State or local level.

(2) DEPARTMENT OF DEFENSE.—The Secretary of the Interior, the Secretary of Agriculture, and program agencies may enter into agreements, jointly or separately, with the Secretary of Defense to assist the military by carrying out projects under this subtitle. Such projects may be carried out on a reimbursable basis or otherwise.

SEC. *05. ENROLLMENT, FUNDING, AND MANAGEMENT.

(a) ENROLLMENT IN PROGRAM.—(1)(A) Enrollment in the American Conservation Corps shall be limited to individuals who, at the time of enrollment, are—

(i) unemployed;

(ii) not less than 16 years or more than 25 years of age (except that programs limited to the months of June, July, and August may include individuals not less than 15 years and not more than 21 years of age at the time of their enrollment); and

(iii) citizens or nationals of the United States (including those citizens of the Northern Mariana Islands as defined in Public Law 98-213 (97 Stat. 1459)) or lawful permanent residents of the United States.

(B) Special efforts shall be made to recruit and enroll individuals who, at the time of enrollment, are economically disadvantaged.

(C) In addition to recruitment enrollment efforts required in subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall make special efforts to recruit enrollees who are socially, physically, and educationally disadvantaged youths.

(D) Notwithstanding subparagraph (A), a limited number of special corps members may be enrolled without regard to their age so that the corps may draw upon their special skills which may contribute to the attainment of the purposes of the subtitle.

(2) Except in the case of a program limited to the months of June, July, and August, individuals who at the time of applying for enrollment have attained 16 years of age but not attained 19 years of age, and who are no longer enrolled in any secondary school shall not be enrolled unless they give adequate written assurances, under criteria to be established by the Secretary of the Interior and the Secretary of Agriculture, that they did not leave school for the express purpose of enrolling. The regulations promulgated under section *04(b) shall provide such criteria.

(3) The selection of enrollees to serve in the American Conservation Corps shall be the responsibility of the chief administrator of the program agency. Enrollees shall be selected from those qualified persons who have applied to, or been recruited by, the program agency, a State employment security service, a local school district with an employment referral service, an administrative entity under the Job Training Partnership Act, a community or community-based nonprofit organization, the sponsor of an Indian program, or the sponsor of a migrant or seasonal farmworker program.

(4)(A) Except for a program limited to the months of June, July, and August, any qualified individual selected for enrollment may be enrolled for a period not to exceed 24 months. When the term of enrollment does not consist of one continuous 24-month term, the total of shorter terms may not exceed 24 months.

(B) No individual may remain enrolled in the American Conservation Corps after that individual has attained the age of 26 years, except as provided in subsection (a)(1)(D) of this section.

(5) Within the American Conservation Corps the directors of programs shall establish and stringently enforce standards of conduct to promote proper moral and disciplinary conditions. Enrollees who violate these standards shall be transferred to other locations, or dismissed, if it is determined that their retention in that particular program, or in the Corps, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees. Such disciplinary measures will be subject to expeditious appeal to the appropriate Secretary.

(b) SERVICES, FACILITIES, SUPPLIES.—The program agency shall provide facilities, quarters, and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, and other appropriate services, supplies, and equipment. The Secretary of the Interior and the Secretary of Agriculture may provide services, facilities, supplies, and equipment to any program agency carrying out projects under this subtitle. Whenever possible, the Secretary of the Interior and the Secretary of Agriculture shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment. Basic standards of work requirements, health, nutrition, sanitation, and safety for all projects shall be established and enforced.

(c) REQUIREMENT OF PAYMENT FOR CERTAIN SERVICES.—Enrollees shall be required to pay a reasonable portion of the cost of room and board provided at residential facilities into rollover funds administered by the appropriate program agency. Such payments and rates are to be established after evaluation of costs of providing the services. The rollover funds established pursuant to this section shall be used solely to defray the costs of room and board for enrollees. The Secretary of the Interior and the Secretary of Agriculture and the Secretary of Defense are authorized to make available to program

agencies surplus food and equipment as may be available from Federal programs.

SEC. *06. FEDERAL AND STATE EMPLOYEE STATUS.

Enrollees, crew leaders, and volunteers are deemed as being responsible to, or the responsibility of, the program agency administering the project on which they work. Except as otherwise specifically provided in the following paragraphs, enrollees and crew leaders in projects for which funds have been authorized pursuant to section *13 shall not be deemed Federal employees and should not be subject to the provisions of law relating to Federal employment:

(1) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, enrollees and crew leaders serving American Conservation Corps program agencies shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty" shall not include any act of an enrollee or crew leader while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee's or crew leader's employment is terminated.

(2) For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, enrollees and crew leaders on American Conservation Corps projects shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code.

(3) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, enrollees and crew leaders shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section.

SEC. *07. USE OF VOLUNTEERS.

Where any program agency has authority to use volunteer services in carrying out functions of the agency, such agency may use volunteer services for purposes of assisting projects carried out under this subtitle and may expend funds made available for those purposes to the agency, including funds made available under this subtitle, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision. The use of volunteer services permitted by this section shall be subject to the condition that such use does not result in the displacement of any enrollee.

SEC. *08. TENNESSEE VALLEY AUTHORITY.

The Board of Directors of the Tennessee Valley Authority may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Tennessee Valley Authority except policymaking or law or regulatory enforcement. Such volunteers shall not be deemed employees of the United States Government except for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work injuries, and shall not be deemed employees of the Tennessee Valley Authority except for the purposes of tort claims to the same extent as a regular employee of the Tennessee Valley Authority would be under identical circumstances.

SEC. *09. SPECIAL RESPONSIBILITIES.

(a) PAY.—(1) The rate of pay for enrollees shall be the equivalent of 95 percent of the pay rate for members of the Armed Forces in the enlisted grade E-1 who have served for four months or more on active duty, from which a reasonable charge for enrollee room and board shall be deducted by the program agency.

(2) Enrollees shall receive $50 cash incentive stipends for every three months of enrollment in the program.

(3) The rate of pay for crew leaders shall be at a wage comparable to the compensation in effect for grades GS-3 to GS-7.

(b) COORDINATION.—The Secretary of the Interior and the Secretary of Agriculture and the chief administrators of program agencies carrying out programs under this subtitle shall coordinate the programs with related Federal, State, local, and private activities.

(c) CERTIFICATION AND ACADEMIC CREDIT.—Pursuant to the provisions of paragraphs (B) and (C) of section *04(g)(3), the Secretary of the Interior and the Secretary of Agriculture shall provide guidance and assistance to program agencies in securing certification of training skills or academic credit for competencies developed under this subtitle.

(d) RESEARCH AND EVALUATION.—The Secretary of the Interior shall provide for research and evaluation to—

(1) determine costs and benefits, tangible and otherwise, of work performed under this subtitle and of training and employable skills and other benefits gained by enrollees, and

(2) identify options for improving program productivity and youth benefits, which may include alternatives for—

(A) organization, subjects, sponsorship, and funding of work projects;

(B) recruitment and personnel policies;

(C) siting and functions of facilities;

(D) work and training regimes for youth of various origins and needs; and

(E) cooperative arrangements with programs, persons, and institutions not covered under this subtitle.

(e) CCC SITES.—The Secretary of the Interior, after consultation with the Secretary of Agriculture, shall study sites at which Civilian Conservation Corps activities were undertaken for purposes of determining a suitable location and means to commemorate the Civilian Conservation Corps. Not later than one year after the date of the enactment of this subtitle, the Secretary of the Interior shall submit a report to the Congress containing the results of the study carried out under this section. The report shall include cost estimates and recommendations for any legislative action.

(f) STUDY.—(1) Program agencies shall not use more than 10 percent of the funds available to them to provide training and educational materials and services for enrollees and may enter into arrangements with academic institutions or education providers, including local education agencies, community colleges, four-year colleges, area vocational-technical schools and community based organizations, for academic study by enrollees during nonworking hours to upgrade literacy skills, obtain a high school diploma or its equivalency, or college degrees, or enhance employable skills. Enrollees who have not obtained a high school diploma or its equivalency shall have priority to receive services under this subsection. Whenever possible, an enrollee seeking study or training not provided at his or her assigned facility shall be offered assignment to a facility providing such study or training.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under paragraph (1) shall be consistent with the requirement of applicable State and local law and regulations.

(g) GUIDANCE AND PLACEMENT.—Program agencies shall provide such job guidance and placement information and assistance for enrollees as may be necessary. Such assistance shall be provided in coordination with appropriate State, local, and private agencies and organizations.

SEC. *10. ANNUAL REPORT.

The Secretary of the Interior and the Secretary of Agriculture shall prepare and submit to the President and to the Congress at least once each year a report detailing the activities carried out under this subtitle in the preceding fiscal year. Such report shall be submitted not later than December 31 of each year following the date of enactment of this subtitle.

SEC. *11. LABOR MARKET INFORMATION.

The Secretary of Labor shall make available to the Secretary of the Interior and the Secretary of Agriculture and to any program agency under this subtitle such labor market information as is appropriate for use in carrying out the purposes of this subtitle.

SEC. *12. EMPLOYEE APPEAL RIGHTS.

(a) FEDERAL EMPLOYEES.—In the case of—

(1) the displacement of a Federal employee (including any partial displacement through reduction of nonovertime hours, wages, or employment benefits) or the failure to reemploy an employee in a layoff status, contrary to a certification under section *13(c)(1) or (2), or

(2) the displacement of such a Federal employee by reason of the use of one or more volunteers under section *07 of this subtitle,

such employee is entitled to appeal such action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) OTHER INDIVIDUALS.—In the case of—

(1) the displacement of any other individual employed (either directly or under contract with any private contractor) by a program agency or grantee, or the failure to reemploy an employee in layoff status, contrary to a certification under section *13(c)(1) or (2), or

(2) the displacement of such individual by reason of the use of one or more volunteers under section *07 of this subtitle,

the requirements contained in section 144 of the Job Training Partnership Act (Public Law 97-300) shall apply, and such individual shall be deemed an interested person for purposes of the application of such requirements.

(c) DEFINITION.—For purposes of this section, the term "displacement" includes, but is not limited to, any partial displacement through reduction of nonovertime hours, wages, or employment benefits.

SEC. *13. AUTHORIZATION OF APPROPRIATIONS.

(a) DISTRIBUTION OF FUNDS.—Of the sums appropriated pursuant to subsection (g) to carry out this subtitle for any fiscal year—

(1) not less than 50 percent shall be made available to the Secretary of the Interior for expenditure by State program agencies which have been approved by the Secretary of the Interior for participation in the American Conservation Corps;

(2) not less than 15 percent shall be made available to the Secretary of Agriculture for expenditure by agencies within the Department of Agriculture, subject to the provisions of subsection (e);

(3) not less than 5 percent shall be made available to the Secretary of Agriculture, under such terms as are provided for in regulations promulgated under section *04(b), for expenditure by other Federal agencies;

(4) not less than 25 percent shall be made available to the Secretary of the Interior for expenditure by agencies within the Department of the Interior, subject to the provisions of subsection (e), and for demonstration projects or projects of special merit carried out by any program agency or by any nonprofit organization or local government which is undertaking or proposing to undertake projects consistent with the purposes of this subtitle;

(5) not less than 5 percent shall be made available to the Secretary of the Interior for expenditure by the governing bodies of participating Indian tribes.

(b) AWARD OF GRANTS.—Within 60 days after enactment of appropriations legislation pursuant to subsection (g), any program agency may apply to the Secretary of the Interior for funds under this subtitle. In determining the allocation of funds among the program agencies, the Secretary shall consider each of the following factors:

(1) The proportion of the unemployed youth population of the State.

(2) The conservation, rehabilitation, and improvement needs on public lands within the State.

(3) The amount of other support for the program and the extent to which the size and effectiveness of a program will be enhanced by the use of the Federal funds.

Any State receiving funds for the operation of any program under this subtitle shall be required to provide not less than 50 percent of the cost of such program.

(c) NON-DISPLACEMENT.—The Secretary of the Interior and the Secretary of Agriculture shall not fund any program or enter into any agreement with any program agency for the funding of any program under this subtitle unless the Secretary concerned or such agency certifies that projects carried out by the program will not—

(1) result in the displacement of individuals currently employed (either directly or under contract with any private contractor) by the program agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the program agency concerned;

(3) impair existing contracts for services; or

(4) result in the inability of persons who normally contract with the agency for carrying out projects involving forestry, nursery, or silvicultural operations on commercial forest land to continue to obtain contracts to carry out such projects.

For purposes of paragraph (4), the term "commercial forest land" means land in the National Forest System or land administered by the Secretary of the Interior through the Bureau of Land Management which is producing, or is capable of producing, 50 cubic feet per acre per year of industrial wood and which is not withdrawn from timber utilization by statute or administrative decision.

(d) STATE SHARE TO LOCAL GOVERNMENTS.—If, at the commencement of any fiscal year, any State does not have a program agency designated by the Governor to manage the program in that State, then during such fiscal year any local government within such State may establish a program agency to carry out the program within the political subdivision which is under the jurisdiction of such local government. Such local government program agency shall be in all respects subject to the same requirements as a State program agency. Where more than one local government within a State has established a program agency under this subsection, the Secretary of the Interior shall allocate funds between such agencies in such manner as he deems equitable.

(e) PROGRAMS ON FEDERAL LANDS.—Funds provided under this section to any Federal agency shall be used to carry out projects on Federal lands and to provide for the Federal administrative costs of implementing this subtitle. In utilizing such funds, the Federal agencies may enter into contracts or other agreements with program agencies and with local governments and nonprofit organizations approved under section *04(h).

(f) PAYMENT TERMS.—Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary of the Interior or the Secretary of Agriculture, as appropriate, finds necessary.

(g) USE OF FUNDS.—Contract authority under this subtitle shall be subject to the availability of appropriations. Funds provided under this subtitle shall only be used for activities which are in addition to those which would otherwise be carried out in the area in the absence of such funds. Not more than 10 percent of the funds made available to any program agency for projects during each fiscal year may be used for the purchase of major capital equipment.

(h) ADMINISTRATIVE EXPENSES.—The regulations under section *04(b) shall establish appropriate limitations on the administrative expenses of Federal agencies and program agencies carrying out programs under this subtitle. Such limitations shall insure that administrative expenses of such programs shall be minimized to the extent practicable taking into consideration the purposes of this subtitle and the nature of the programs carried out under this subtitle.

(i) APPROPRIATION LEVELS.—There is authorized to be appropriated for the purposes of carrying out this subtitle $75,000,000 for each of the fiscal years 1987 through 1989. Funds appropriated under this subtitle shall remain available until expended.

Mr. MATHIAS. Mr. President, drug abuse is one of the most serious problems facing this country. But it is also a symptom of another, equally serious, problem: youth unemployment. The two problems are inextricably linked. Therefore, as we work on the drug bill, we must keep in mind that successful treatment of drug addiction, like any disease, must go hand in hand with the successful treatment of its symptoms.

Statistics repeatedly demonstrate that, despite the decrease in overall unemployment over the last few years, teenage unemployment remains tenaciously high. At last count, 17.7 percent of all teenagers, and double the percentage of black teenagers, are without work. And it is no coincidence that it is these same young people, especially those who live in the inner city, who turn to drugs to deal with the frustration and boredom inherent in their everyday lives. Today, I offer an amendment that is an effective response to this two-pronged dilemma.

My amendment would create the American Conservation Corps [ACC], a program which would provide employment and training opportunities for young men and women while at the same time rehabilitating and improving the Nation's public lands and community resources. The bill is nearly identical to H.R. 99, which passed the House early this Congress. The Senate approved similar legislation which was enacted by the 98th Congress, but was pocket vetoed by the President for budget reasons. Taken in the context of the national commitment to fight drug abuse, however, and money spent on a program as constructive as the ACC is money well spent. For the benefit of my colleagues who are unfamiliar with this issue, I will summarize the content of my amendment and indicate where it differs from the House-passed bill.

The ACC has both year round, for youths ages 16–25, and summer, for youths ages 15–21, components. While open to all eligible youths, special efforts would be made to enroll and recruit youth who are economically disadvantaged, as defined in the Job Training Partnership Act. Regulations for the program are to be developed by the Secretaries of Interior and Agriculture, in consultation with the Department of Labor, and with public participation.

The Corps' work would include conservation of forests, fish, wildlife, rangelands, and soils; revitalization of urban areas and preservation of historic and cultural sites; development and maintenance of recreational areas, roads, and trails; erosion and pest control; energy conservation and production of renewable energy; and emergency rehabilitation services and other functions.

The bill also provides for educational and training opportunities. Appropriations of $75 million would be authorized for each of the fiscal years 1987 through 1989. The House bill appropriated funds as necessary; 50 percent of the funding would be shared by States and local governments and 5 percent by Indian tribes; the remainder would be used by the Departments of Agriculture and Interior and other Federal agencies.

Due in part of the President's veto message and in part to a sincere effort to improve the bill, my amendment differs in some aspects from H.R. 99 as it passed the House. First, changes were made to place more emphasis on

State and local participation in the program. Although Federal agencies would still have the discretionary authority to carry out their own Conservation Corps programs, they would be encouraged to use other program agencies and State-approved local governments and nonprofit organizations to do the actual work.

In the same vein, emphasis is placed on spurring new and expanded programs and assuring that current levels of effort are not inadvertently reduced. For instance, the award of State funds will be made on a competitive basis, taking into consideration the youth population of an area, the amount of public lands and the extent to which they can be serviced, and the amount of other support for the program, and the extent to which Federal funds would enhance the size and effectiveness of the program. More important, the match requirement for State grants is increased from 25 to 50 percent.

Other changes include encouraging noncash Federal contributions to these programs. Thus, the Secretaries of Interior, Agriculture, and Defense are authorized to provide services, facilities, supplies and equipment, and any surplus food to participating programs. Finally, by streamlining reporting requirements and by requiring that the Secretary of the Interior only review applications for entire programs, and not for each conservation center, administrative expenses will be reduced.

Creative judges have often looked outside of the courtroom and the jail in order to steer first time drug offenders, especially youthful offenders, away from drugs. The idea, which is a good one, is to remove young people from an environment which fosters drug abuse and put them in a drug-free environment in which they can be rehabilitated, learn, and work. The ACC would provide such as environment.

As my colleagues are aware, I have been an advocate of an ACC for many years. Programs like the ACC have proven their effectiveness at the State level in employing and training teenagers and young adults. And jobs are essential to the task of combating drug abuse among our young people. My colleagues need only recall their first jobs to recognize the value of employment. The lessons in responsibility, the growth in self-assurance and self-esteem and pride in accomplishment provided the bases upon which we structured the rest of our lives. But these fundamentals are missing from the lives of many unemployed teenagers and adults. Participation in the ACC would provide these fundamentals.

If the collective judgment of the Senate and House is to take this omnibus step to deal with the drug problem in the United States, one rational and necessary element of our efforts must include something along the line of the ACC. I, therefore, urge my colleagues to adopt this amendment.

I offer this amendment on behalf of myself and the distinguished Senator from New York, Mr. MOYNIHAN.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, this matter is, of course, within the jurisdiction of the Committee on Energy and Natural Resources, and as the Senator from Maryland has indicated, the similar but not necessarily identical, but similar legislation was passed 2 years ago.

We have not considered this legislation during the last 2 years, although since the action taken in the House of Representatives on similar legislation, we have been trying to negotiate with them on some legislation that might be precisely this or precisely like the House language but at least similar thrust as a part of two of three measures that might well be negotiated yet during this session of Congress.

If the Senator would be willing to allow us that opportunity to try to negotiate with the House on that package of legislation, I think it might enhance the likelihood that we would be successful in doing what the Senator desires.

Mr. MATHIAS. As the chairman of the committee with jurisdiction, the Senate support and interest in this program is absolutely vital and essential, and I am encouraged by the fact that he has these negotiations underway.

Under those circumstances, Mr. President, I will be inclined to rely upon his assurances and withdraw the bill.

The PRESIDING OFFICER. The Senator withdraws his amendment. The amendment is withdrawn.

□ 0130

Mr. THURMOND. Mr. President, I think we have come about to the end of the road now. Unless somebody else has an amendment, we could go to third reading.

Mr. CHILES. We do have a couple of technical amendments.

Mr. WEICKER. Mr. President, I would only request of the managers of the bill, since we are in discussions here, that prior to going to third reading, we put in a call for a quorum.

Mr. CHILES. I think the Senator from New Mexico has a technical amendment, and I have a little one after that.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

TRANSFER OF WASHINGTON NATIONAL AND DULLES AIRPORTS

Mr. WARNER. Mr. President, I have an amendment here, but before sending it to the desk, I should like to discuss procedure. This is the amendment which this Chamber has considered before. It provides for the transfer of Washington National and Dulles Airports to a private authority with every expectation that funding will be raised from the private sector to provide for much needed modernization of both of these facilities.

Mr. President, I have, out of courtesy, acquainted those who have spoken against this legislation before. And it would not be my intention to have the Senate engaged tonight in prolonged debate on this bill which is now submitted in the form of an amendment.

I submit it on behalf of Mr. TRIBLE and myself. It provides essentially the same relief that the bill that was passed by this Chamber provided, modified only to enable the House of Representatives to accept it, hopefully in the form of the amendment that will be sent to the desk and thereby avoid the necessity of a conference.

The present form of this amendment has been discussed at great length with those in the House of Representatives that would have a strong voice on the adoption of this legislation and it comports, as near as we have been able to fashion it, with their objectives as well as the objectives of the Senate.

But recognizing the importance of this piece of legislation, I do not want to send forth an amendment that would result in any prolonged debate. So my offer would consist of not more than 3 or 4 minutes' explanation of this amendment and then the amendment could be voted on in a 10-minute vote following whatever vote may be taken hereafter in connection with another amendment, thereby being convenient to the Members of the Senate at this late hour.

If there are those present tonight that wish to have an extended debate, then I would not send the amendment forward. Rather, I would represent that this amendment would be brought up at the time of the continuing resolution. And it would be my hope, if there are Senators in opposition, that they would present to the Senate their own amendment, fashion an amendment. Mr. TRIBLE and I do not take any pride that we are the only ones that know how to solve this problem. There may be others who know how to do it better. And that amendment could be put on in the nature of a substitution and then allow the Senate to make its choice between the two amendments.

Mr. President, with that in mind, I am prepared to send this amendment to the desk, but I see my distinguished colleague from South Carolina on his feet and, before sending it, I would be happy to hear from him.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Virginia for his courtesy. There is certainly a very, very strong feeling on behalf of this Senator and several others in this body. What we have heard heretofore is really the dialog between the State of Maryland and the State of Virginia.

Obviously, the State of Maryland has had quite an interest, in that they have not only purchased an airport, the Baltimore-Washington International, but they have expended some $100 million in State bonds or more—I think it is around $150 million—and, necessarily, they are in direct competition. And both the distinguished Senator, the senior and the junior Senator, have articulated it very well to the point that perhaps it has been rejected on the reconciliation bill, this very same measure this last week.

What really happened is we have not had a full discussion of the tremendous waste that this particular bill proposes. I really, having had a slight experience in this body, rather get caught up with myself hearing about waste, fraud, and abuse in military contracts when the waste, fraud, and abuse begins on the floor of the Senate itself.

And in this particular instance of trying to talk about balanced budgets and doing away with deficits and spending money that we do not have, and there with billions of dollars, which Washington National and Dulles International have every right, title, and interest thereto, ready to be used to equip and renovate and otherwise to engage in this giveaway and buyoff and sham. There is no other way to describe it, as this Senator sees it. They have sort of upped the price, put in the politics—four Senators and four Congressmen, and now they bought off the State of Maryland—not the distinguished Senators from the State of Maryland, which put this in that different position. I have been advised of that this evening.

You can bet your boots this Senator has an amendment. First, on the fair market value; second, for the sale of landing slots at these particular facilities, which is another sham in and of itself; whereby, for example, in my own personal experience, having practiced in this particular area with respect to public convenience and necessity, these landing slots over the years have built up over public convenience and necessity.

My own hometown is a typical example, of Charleston, where I had three direct flights into National. It was owned by National Airlines, then transferred to Pan Am, then transferred to Air Florida. And then, when they had the crash, they had the right to sell. And so they sold off for millions of dollars these particular landing rights.

Now, I spend half of my time in Charlotte, NC, where I ought to run from the State of North Carolina. I am there more than I am my hometown, trying to get home. It used to be a direct flight of an hour's time, now it is 3 hours. Instead of the price going down, it is already up to $185. I can fly 500 miles further to Miami. This is what has been going on.

I have an amendment with respect to the nighttime noise limitation, with respect to the maintenance of the control, with the makeup of the particular commission itself. But, more than anything else, Mr. President, I have had, I say to the Senator from Virginia, an amendment to take from the trust fund this $8.5 billion.

I have been paying for 20 years as a Member of the Senate my 8 percent going to and from every weekend, practically, last year and all except two weekends this year. We have all paid in. We bought these national facilities.

But somehow this fits into the President's silly idea of no revenues and doing away with the Government.

Here, the Government has the funds. We spend $2.5 billion, but we bring in $3.5 billion. They told us it took $250 million; I would say nearly $400 million. The fund is growing in interest more than that each year, just take the interest, not for South Carolina, Virginia, or Maryland's airport, but for all the 50 airport facilities. These are being operated efficiently. The Federal Aviation Administration, everyone has agreed to that in the particular hearings. I cannot get any movement on my bill, and everybody knows the reason why.

But I can tell you here and now, all they need do is take the money from the trust fund, like they took the $150 million for Dallas-Forth Worth, like they took the $100 million for Atlanta, like they took the $90 million just to extend the runway down at St. Thomas.

But, somehow, we cannot get a red cent out of the Virginia Airport Trust Fund to go ahead and modernize. The plans are there. They are not going to be made up by a commission. We have those in the Department of Transportation for the landing, for the parking garages, to modernize, to connect it with the subway, the transit system.

□ 0140

We have it for the end field terminals needed at Dulles International. We have it all on board. All we need is the money. What do we do to get $250 million? I will use that figure because that is what we have from CBO. We spend $172 million to get the $250 million, and now an extra $100 million to pacify Maryland which is $850 million, plus the cost itself which is another $150 million. So we are spending $1 billion for nothing. We got the airports. They are ours. They belong to us. They belong to everybody.

So you can see I am prepared to talk at length on the merits of this, and it never has been discussed.

Mr. LEAHY. Will the Senator yield?

Mr. HOLLINGS. I will be delighted to yield for a question because I have been in this experience of losing the floor.

Mr. LEAHY. Will the Senator be able to yield for a brief question without losing his right to the floor?

As a former prosecutor, I find this discussion of drug law enforcement fascinating that we have been having in the last few minutes.

I am wondering, Is there going to be a break this morning for us to go to church on Sunday? Maybe we can get some idea.

Mr. HOLLINGS. Ask the Senators who are managing this bill. I am trying to protect the taxpayers. The National Taxpayers Union came out categorically—I did not by the way quote my other clients. I was only talking about what they said in the newspaper about the trial lawyers. I would like to ask the American Bar Association, the Consumers Union of America, the Association of Supreme Court Justices of America, the Association of State Attorneys General, and none of these teams were in the particular articles that were ever written, you see.

We were, because we were polite about it, and we yielded too much. We never could talk about other clients. I have some other clients.

Mr. BIDEN. Will the Senator yield?

Mr. HOLLINGS. For a question only.

Mr. BIDEN. I would like to ask the Senator if he would mind adding me as one of his clients.

Mr. HOLLINGS. Yes.

Mr. BIDEN. I would like to ask the Senator whether or not he thinks the Senator from Virginia got the message and maybe that the Senator from Virginia might be willing now to let us get on with the business of the drug bill. That is my question. Does the Senator think he did? If he did, would the Senator be willing to stop?

Mr. WARNER. Mr. President, I am willing to respond to that if the Senator from South Carolina will graciously allow me 2 minutes.

Mr. HOLLINGS. I am delighted so long as I do not lose the right to the floor. I ask unanimous consent that I do not lose the right to the floor.

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

Mr. WARNER. Mr. President, I first ask unanimous consent that my amendment be printed.

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

At the end of the bill, add the following new title:

TITLE VI—METROPOLITAN WASHINGTON AIRPORTS

SEC. 6001. SHORT TITLE.

This title may be cited as the "Metropolitan Washington Airports Act of 1986".

SEC. 6002. FINDINGS.

The Congress finds that—

(1) the two federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of the limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

SEC. 6003. PURPOSE.

(a) IN GENERAL.—It is therefore declared to be the purpose of the Congress in this title to authorize the transfer of operating responsibility under long-term lease of the two Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control management, operation, and development of these important transportation assets.

(b) INCLUSION OF BWI NOT PRECLUDED.—Nothing in this title shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

SEC. 6004. DEFINITIONS.

In this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(1) AIRPORTS AUTHORITY.—The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 6007.

(3) EMPLOYEES.—The term "employees" means all permanent Federal Aviation Administration personnel employed on the date the lease under section 6005 takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) METROPOLITAN WASHINGTON AIRPORTS.—The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(6) WASHINGTON DULLES INTERNATIONAL AIRPORT.—The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) WASHINGTON NATIONAL AIRPORT.—The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

SEC. 6005. LEASE OF METROPOLITAN WASHINGTON AIRPORTS.

(a) AUTHORITY TO ENTER INTO LEASE.—The Secretary is authorized to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority. Authority to enter into a lease and agreement under this section shall lapse two years after the date of the enactment of this title.

(b) PAYMENTS.—

(1) LEASE PAYMENTS.—The lease shall provide for the Airports Authority to pay to the general fund of the Treasury $150,000,000 over the term of the lease, in equal annual installments.

(2) Retirement obligations.—

(2) DISCONTINUED SERVICE.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of title 5, United States Code, of employees who elect not to transfer to the Airports Authority.

(B) UNFUNDED LIABILITY.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (1) the future cost of benefits payable from the Fund and due the employees covered under section 1008(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 1008(e). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

(c) MINIMUM TERMS AND CONDITIONS.—The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) OPERATION OF AIRPORTS AS A UNIT.—The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2) AIRPORT PURPOSES.—The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this Act is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) AIP REQUIREMENTS.—The Airports Authority shall be subject to the requirements of section 511(a) of the Airport and Airway Improvemnt Act of 1982 and the assurances and conditions required of grant recipients under such Act as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

(4) CONTRACTS.—In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5) CONTINUATION OF REGULATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) EXCEPTIONS.—The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) OPERATIONS.—The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this Act and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) TRANSFER OF RIGHTS, LIABILITIES, AND OBLIGATIONS.—

(A) IN GENERAL.—Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tarriffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) EXCEPTIONS.—The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(c) PAYMENTS INTO EMPLOYEES' COMPENSATION FUND.— The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(d) COLLECTIVE BARGAINING RIGHTS.—The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) AUDITS.—The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) CODE OF ETHICS.—The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by the board and its employees.

(9) RESTRICTION ON USE OF CERTAIN REVENUES.—Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) GENERAL AVIATION FEES.—The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(1) OTHER TERMS.—The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this title.

(d) SUBMISSION TO CONGRESS.—The Secretary shall submit the lease entered into under this section to Congress. the lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, which ever occurs later.

(e) ENFORCEMENT OF LEASE PROVISIONS.—The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

SEC. 6006. CAPITAL IMPROVEMENTS, CONSTRUCTION, AND REHABILITATION.

(a) IMPROVEMENTS.—It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 6007 of this title for any such improvement, construction, or rehabilitation.

(b) SECRETARY'S ASSISTANCE.—The Secretary shall assist the three airports serving the Washington, D.C. metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

SEC. 6007. AIRPORTS AUTHORITY.

(a) POWERS CONFERRED BY VIRGINIA AND THE DISTRICT OF COLUMBIA.—The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) PURPOSE.—The Airports Authority shall be—

(1) independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the Federal Government; and

(2) a political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(c) GENERAL AUTHORITIES.—The Airports Authority shall be authorized—

(1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airport for public purposes;

(2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—

(A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or part from the proceeds of such bonds;

(3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) to levy fees or other charges; and

(5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on the date of enactment of this title.

(d) CONFLICT-OF-INTEREST PROVISIONS.—The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Au-

thority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirement of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 6005(c)(8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under an exception may be granted.

(e) BOARD OF DIRECTORS.—

(1) APPOINTMENT.—The Airports Authority shall be governed by a Board of directors of 11 members, as follows:

(A) 5 members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governor of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) RESTRICTIONS.—Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

(3) TERMS.—Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 4 years.

(4) REMOVAL OF PRESIDENTIAL APPOINTEES.—A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) REQUIRED NUMBER OF VOTES.—Seven votes shall be required to approve bond issues and the annual budget.

(f) BOARD OF REVIEW.—

(1) COMPOSITION.—The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review, of the Airports Authority, established by the board of directors. The Board of Review shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) 4 members of the House of Representatives from a list provided by the Speaker of the House;

(B) 4 members of the Senate from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. A member of the House of Representatives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

(2) TERMS.—Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) shall be appointed for terms of 6 years, except that of the members first appointed one member under each of subparagraphs (A) and (B) shall be appointed for a term of two years and one member under each of subparagraphs (A) and (B) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (C) shall be appointed for terms of 2 years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(3) PROCEDURES.—The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each years and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

(4) DISAPPROVAL PROCEDURE.—

(A) SUBMISSION REQUIRED.—An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to become effective.

(B) ACTIONS AFFECTED.—The following are the actions referred to in subparagraph (A):

(i) the adoption of an annual budget;

(ii) the authorization for the issuance of bonds;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan, including any proposal for land acquisition; and

(v) the appointment of the chief executive officer.

(C) 30-DAY DISAPPROVAL PERIOD.—If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

(D) EFFECT OF DISAPPROVAL.—An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) REQUEST FOR CONSIDERATION OF OTHER MATTERS.—The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(6) PARTICIPATION IN MEETINGS OF AIRPORTS AUTHORITY.—Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(7) STAFF.—The Board of Review may hire one staff person, to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

(8) LIABILITY.—A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(g) CERTAIN ACTIONS TO BE TAKEN BY REGULATION.—Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) LIMITATION ON AUTHORITY.—If the Board of Review estabished under subsection (f) is unable to carry out its functions under this title by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by subsection (f)(4) to be submitted to the Board of Review.

SEC. 6008. FEDERAL EMPLOYEES AT THE METROPOLITAN WASHINGTON AIRPORTS.

(a) EMPLOYEE PROTECTION.—Not later than the date the lease under section 6005 takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests of employees during the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 5 takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to trnsferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three healh insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonabley comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

(b) LABOR AGREEMENTS.—

(1) ADOPTION.—The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 6005 takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements

shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of title 5, United States Code.

(2) CONTINUATION.—The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) RIGHTS OF TERMINATED EMPLOYEES.—Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 6005 takes effect shall be entitled, as a condition of any lease entered into in accordance with section 6005 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

(d) ANNUAL AND SICK LEAVE.—Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 6005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of title 5, United States Code.

(e) CIVIL SERVICE RETIREMENT.—Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 6005 takes effect is subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States Government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) SEPARATED EMPLOYEES.—An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

(g) ACCESS TO RECORDS.—The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under secion 6005 takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

SEC. 6009. RELATIONSHIP TO AND EFFECT OF OTHER LAWS.

(a) OTHER LAWS.—In order to assure that the Airports Authorty has the same proprietary powers and is subject to the same restrictions with respect to Federal law as any other airport except as otherwise provided in this title, during the period that the lease authoirized by section 6005 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes", approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) INAPPLICABILITY OF CERTAIN LAWS.—The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of fee simple title to such airports or by reason of the authority of the Board of Review under section 6007(f).

(c) POLICE POWER.—The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d) PLANNING.—

(1) IN GENERAL.—The authority of the National Capital Planning Commission under section 5 of the Act of June 6, 1924 (40 U.S.C. 71d) shall not apply to the Airports Authority.

(2) CONSULTATION.—The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e) OPERATION LIMITATIONS.—

(1) HIGH DENSITY RULE.—The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this title and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) ANNUAL PASSENGER LIMITATIONS.—The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 83.124) shall cease to be in effect on the date of the enactment of this title.

SEC. 6010. AUTHORITY TO NEGOTIATE EXTENTSION OF LEASE.

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 1005(a).

SEC. 6011. SEPARABILITY.

Except as provided in section 6007(h), if any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 6012. NONSTOP FLIGHTS.

A person may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,000 statute miles away from Washington National Airport.

The table of contents of the bill is amended by adding at the end thereof the following:

TITLE VI—METROPOLITAN WASHINGTON AIRPORTS

Sec. 6001. Short title.
Sec. 6002. Findings.
Sec. 6003. Purpose.
Sec. 6004. Definitions.
Sec. 6005. Lease of Metropolitan Washington airports.
Sec. 6006. Capital improvements, construction and rehabilitation.
Sec. 6007. Airports authority.
Sec. 6008. Federal employees at the Metropolitan Washington airports.
Sec. 6009. Relationship to and effect of other laws.
Sec. 6010. Authority to negotiate extension of lease.
Sec. 6011. Separability.
Sec. 6012. Nonstop flights.

Mr. WARNER. Second, I will not send forth the amendment tonight.

I am pleased that the Senator from South Carolina has in mind, as he stated, the framework of the bill. I hope he will join in time the continuing resolution when Mr. TRIBLE and I put forth our bill. We will lay the Senator's right alongside as a substitute, and Mr. TRIBLE and I will not take up the very, very modest amount of time explaining our bill, and if necessary and even less amount of time rebutting or in any way protesting the Senator's bill, provided the Senate can then make a choice between the two proposals.

I thank the Chair.

I thank my distinguished colleague.

Mr. HOLLINGS. Mr. President, I am prepared now to yield the floor. Before I yield it, I want to clearly understand that I am not necessarily accepting that as the proposal other than the fact that it is not coming on this bill tonight. We will be prepared to argue this in depth with respect to the selling off of the public's property in a fire sale which is being operated very efficiently and very properly. It just needs modernization. It needs expansion out there, with end field terminal facilities at Dulles.

We have studied it very, very thoroughly. I very much regret the idea that somehow this is going to be for the public benefit—this particular

amendment. We know where the public's interest lies. If they will not stand up and talk, this Senator intends to do it.

I do not like the Conrail sale. I want that clearly understood here at a quarter to 2 in the morning. That one has brokers running all around here, and doing everything else, and doing exactly the opposite of what the will of the U.S. Senate was. We went through with the deliberate operational sale that will continue the public service. Now we are going in with a scam of everybody getting in with brokers, money, and everything else of that kind. I do not like it.

I am saying so in conference. I am a minority of a minority.

So I am not going to let this one go when I have some chance of being heard on it.

I thank the distinguished chairman.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 3080

(Purpose: To conform certain provisions of the bill to the requirements of the Congressional Budget Act of 1974)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 3080.

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

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

The amendment is as follows:

In section 1152(a) of the bill, strike paragraph (1) and redesignate the subsequent paragraphs appropriately.

In paragraph (9)(B) of secton 524(c) of title 28, United States Code, as added by section 1152(a)(6) of the bill, insert "in such amounts as are specified in appropriation Acts," after "disbursed,".

In section 1152(b)(1) of the bill, strike subparagraph (A) and redesignate the subsequent subparagraphs appropriately.

Strike subsection (c) of section 1152 of the bill.

In section 981(e) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except secton 3 of the Anti-Drug Abuse Act of 1986," after "law,".

In section 981(i)(1) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except section 3 of the Anti-Drug Abuse Act of 1986," after "law,".

In paragraph (2)(A) of section 511(e) of the Controlled Substances Act (42 U.S.C. 881(e)), as added by section 1772 of the bill, insert ", to the extent provided in appropriation Acts," after "title shall".

Mr. DOMENICI. Mr. President, the bill before us clearly states that it is an authorizing bill. The language was drawn and inserted in the bill. But after that language was drawn other items were put in the bill. So this amendment cross-references those other items to the previous section which clearly makes it an authorizing bill, notwithstanding any language which might indicate to the contrary.

Second, it strikes a provision in this bill which dictates scoring requirements for purpose of section 302 of the Budget Act. Such language is supposed to be produced only by the Budget Committee.

Those who have proposed it understand these minor problems and have no objection to the amendment. I understand the two floor managers have no objection to the technical amendments here in this amendment. Senator CHILES joins me in offering it.

Mr. EVANS. Would the Senator yield for a question?

Mr. DOMENICI. Indeed I am pleased to.

Mr. EVANS. Would it be accurate to say this is in the nature of a procedural kind of amendment but the end result of it in blunt terms is to say that this bill now provides all the guns we need in the war against drugs but so far there are no bullets? Is that pretty accurate? The bullets being the dollars?

Mr. DOMENICI. But the bill without this technical amendment is 99 percent without the bullets. We just wanted to make sure that 1 percent is also without. It was already almost completely clean of entitlements or direct spending. But amendments were added. They were not referenced.

Mr. EVANS. I understand that.

Mr. DOMENICI. Now they all refer to it being only an authorizing bill.

Mr. EVANS. So it is 100-percent pacifist proposition right now.

Mr. DOMENICI. It is a 100-percent declaration of war but we do not have any armaments yet.

Mr. CHILES. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3080) was agreed to.

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

Mr. CHILES. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3081

(Purpose: To correct drafting errors to clarify intent of section 1451)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. CHILES] proposes an amendment numbered 3081.

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

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

The amendment is as follows:

Strike everything beginning on page 79, line 4 through and including line 13 on page 80 and insert in lieu thereof the following:

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration $11,000,000; except that notwithstanding section 1345 of title 31, United States code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center.

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $78,000,000, of which $50,000,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $2,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $6,000,000.

(i) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts contained in H.R. 5161, as reported to the Senate by the Committee on Appropriations on September 3, 1986.

Mr. CHILES. Mr. President, this technical amount now authorizes only those incremental amounts which the sponsors intended to be provided for in section 1451.

Mr. DOMENICI. Mr. President, I agree. That is what it does. I support it. It should be adopted.

Mr. CHILES. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 3081) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I misspoke myself in a dialog with the distinguished chairman of the Appropriations Committee. I indicated that the President sent us a request for a drug bill indicating that it was an emergency, and that the President had not sent up a method of paying for it.

□ 0150

As a matter of fact, the proposal that the President sent up was less than what we have before us in terms of dollars requested and programs requested.

The President did send up his proposal as how he would pay for it, with different offsets, cancellations of certain progams. I do not desire this evening to go into the details as to whether those offsets would be acceptable to the Senate, other than to say they were adequate in a technical manner offset the cost of the bill the President requested.

So as to clarify the record, I ask unanimous consent to have the submission of the President made part of the record at this point. I believe his request to about $255 million. This bill as we priced it, the one before us, if fully funded, will be about $642 million.

So the President would not have enough offsets for this bill. I hope the leader will ask over the weekend whether the President supports our bill and, if he does, I would hope he would be asked to recommend the ways he would pay for it by way of offsets, cuts, or reductions.

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

DRUG-FREE AMERICA INITIATIVE

[In million of dollars]

Program and agency	Total program		Budget amendment		Outlay offsets
	Budget authority	Outlays	Budget authority	Outlays	
Southwest border:					
Defense:					
Various	309.9	64.0	[1] 309.9	64.0	64.0
Air Force	15.0		15.0		
Justice:					
U.S. attorneys	6.0	17.4	6.0	17.4	
Drug Enforcement Administration	26.0		26.0		
Treasury: Customs	10.2	3.2	10.2	3.2	
ACTION	5.0	3.0	5.0	3.0	
Defense/Justice/Treasury (Operations and maintenance)	33.0	([2])			
Legislated savings: Bureau of Customs					25.0
Subtotal, Southwest border	405.0	87.6	372.1	87.6	89.0
Goal I: Drug-free Federal workplace (all agencies)	56.0	56.0			56.0
Goal II: Drug-free schools (education)	100.0	10.7	[3] 97.0	[3] 10.7	[3] 9.7
Goal III: Substance Abuse Services. (HHS)	233.0	140.0	225.3	140.0	140.0
Southeast border (international cooperation and law enforcement)	100.0	([4])			([4])
Total	894.0	294.2	694.4	238.2	294.7

[1] No formal congressional action required.
[2] Funds will not be used until fiscal years 1988 and 1989.
[3] The increase is offset by a reduction to the amount proposed for later transmittal for student financial assistance.
[4] Outlays not known at this time. Will be offset.

OFFSETS TO INCREASES FOR THE DRUG-FREE AMERICA INITIATIVE

As required by the Gramm-Rudman-Hollings Act, all fiscal year 1987 outlays associated with the President's Drug-Free America Initiative are fully offset by reductions in other programs. Each of these 1987 offsets is discussed below in terms of the reductions in budget authority needed to achieve them.

Outlay increases for subsequent years will be absorbed within Gramm-Rudman-Hollings limits in the budgets for those years.

Budget authority

[In thousands of dollars]

Program, agency, and account	*Amount*
Department of Defense—Military:	
Operation and maintenance, Air Force (a reduction in Air Force Industrial Fund activities)	6,400
Aircraft procurement, Navy (a reduction in the procurement of F-18 aircraft)	152,400
Aircraft procurement, Air Force (a reduction in the procurement of F-16 aircraft)	73,600
Other procurement, Air Force (cancellation of the procurement of ground terminals for the Precision Location Strike System and a delay in the procurement of ground terminals for the Milstar satellite system)	74,500
Military construction, Air Force (a delay in the procurement of the Protected Combat Targeting Center at Ramstein Air Force Base, Germany)	18,000
Total	324,900

The requested authorization legislation for these projects was not enacted. Consequently, fiscal year 1987 budget authority has been reduced by $324.9 million, and fiscal year 1987 outlays will be $64 million less.

Department of the Treasury:	
Customs Service (proposed legislation)	25,000

User Fees are collected by the Customs Service under the authority of Public Law 99-272, the Consolidated Budget Reconciliation Act of 1985, for services provided outside of normal business hours. Under the proposed offset, these collections ($25 million) would be paid into the general fund of the Treasury rather than remain available to reimburse Customs for overtime costs. Overtime costs for customs will be absorbed within appropriated funds; these user fees would be used to reduce the deficit.

Goal I: Drug-free Federal workplace:	
All Federal agencies	56,000

The $56 million cost of insuring a drug-free Federal workplace will be absorbed within the currently available resources of the various Federal agencies. These costs, including testing and employee assistance programs, will be accommodated within the agencies' fiscal year 1987 operating budgets, without reducing the services and benefits provided.

Goal II: Drug-free schools:

Department of Education: Student financial assistance (proposed for later transmittal) 97,000

The proposed offset for student financial assistant represents only 2.5 percent of the amount proposed for this activity in the President's 1987 budget. This difference would not have a significant impact on the amount of student aid available nationally, nor on college attendance. This $97 million reduction in budget authority would result in a $9.7 million reduction in budget authority would result in a $9.7 million reduction in outlays in fiscal year 1987.

Goal III: Substance abuse services:

Department of Health and Human Services: Public Health Service (PHS) $165,342

The Administration believes support for drug abuse research and treatment are now more urgent than general areas of biomedical research and health services. Accordingly, the President has proposed budget amendments to reallocate $165 million or 1.8 percent of the fiscal year 1987 request for the PHS from general biomedical research and health services into research and treatment services targeted on drug abuse.

Health Resources and Services Administration: Health resources and services ..... (75,042)

The President's antidrug abuse initiative will focus a portion of Federal primary care funds on community based drug abuse prevention, rehabilitation and treatment programs. The proposed $75 million offset from the primary care block grant recognizes that drug abusers are among the population currently served by Federal primary care funds. The President's antidrug abuse initiative would thus focus a portion of these funds more directly on drug abuse treatment.

Centers for Disease Control (CDC): Disease control, research, and training ..... (1,953)

The proposed offset of $2 million or 2.1 percent from CDC's preventive health block grant reflects the administration's belief that additional general health services funds should be targeted on drug treatment.

National Institutes of Health:

National Cancer Institute	(15,223)
National Heart, Lung, and Blood Institute	(16,898)
National Institute of Dental Research	(2,160)
National Institute of Diabetes and Digestive and Kidney Diseases	(6,646)
National Institute of Neurological and Communicative Disorders and Stroke	(8,695)
National Institute of Allergy and Infectious Diseases	(2,827)
National Institute of General Medical Sciences	(3,308)
National Institute of Child Health and Human Development	(6,244)
National Eye Institute	(2,338)
National Institute of Environmental Health Sciences	(2,968)
National Institute on Aging	(2,532)
National Institute of Arthritis and Musculoskeletal and Skin Diseases	(2,254)
Research resources	(16,054)
John E. Fogarty International Center	(200)
Subtotal, National Institutes of Health	(88,347)

The proposed $88 million NIH offset represents 1.8 percent of the fiscal year 1987 request and is derived from research centers, research project grants, and training. These offsets will be taken against general research projects and will not, for example, reduce the recent increases proposed for AIDs research.

Social Security Administration:

Low income home energy assistance program (LIHEAP) 60,000

The Administration's proposed LIHEAP funding reduction to $1,812 million is appropriate in light of: Precipitious declines in energy prices. The Senate Appropriations Committee notes that fiscal year 1987 home energy costs are expected to drop to fiscal year 1982 levels. Substantial State grants available from petroleum overcharge case settlements—over $2 billion alone from the recent Stripper Well decision.

The Senate cites these considerations in reducing the Appropriations Committee LIHEAP funding mark by $50 million to $1,825 million—essentially the same offset proposed by the Administration.

Total, HHS 225,342

Outlays in fiscal year 1987 will be $140 million less as a result of this $225 million reduction in budget authority.

Mr. DOMENICI. Mr. President, I would say to the Senate I do not think you should hold your breath for that proposal. The way the Budget Act reads, the President can recommend offsets, items that we have refused to cut in the past that he has asked about. So it would be a resubmission, in a sense, of what he sent to us before.

Nevertheless, we ought to receive it if he is willing to give it to us.

Mr. THURMOND. Mr. President, if there are no further amendments, I ask for a third reading.

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

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

Mr. DOMENICI. Mr. President, while a proposed consent agreement is being discussed, I thought it might be appropriate and perhaps helpful to the Senate over the weekend before we return to the matter if Senators might have a chance to review the contents of the bill that is before us as it relates to the current appropriations bills that the United States Senate will have before it in the continuing resolution.

This is a detail of all of the program add-ons and new programs in this bill for which funding is requested. All of them are in excess of or new as compared with current law and current funding in the continuing resolution.

They amount to $1.4 billion in budget authority and $632 million in outlays.

I ask unanimous consent that a table of those new provisions be made part of the RECORD for the information of Senators.

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

SENATE APPROPRIATIONS PLUS DRUG BILL VERSUS 302(b) ALLOCATION—FISCAL YEAR 1987

[Dollars in millions]

	Budget authority	Outlays
Commerce, State, Justice		
Drug Enforcement Administration	11	9
Federal prison construction	50	16
Federal prison salaries and expenses	28	24
Judiciary, defender services	18	11
Judiciary, fees of jurors and commissioners	8	7
Justice assets forfeiture fund	45	38
Justice programs, Office of—pilot program	2	1
Justice statistics, Bureau of	3	1
Justice—Hawaii helicopter	7	4
Mandatory sentencing	2	2
State and local narcotics control assistance	115	29
U.S. Attorneys	6	5
U.S. Information Agency	2	1
U.S. prisoners nonfederal	2	2
Total Commerce, State, Justice	299	150
Defense		
Aerostat Radar Systems—3	50	3
Defense for transfer to DOT for Coast Guard on ships	15	13

SENATE APPROPRIATIONS PLUS DRUG BILL VERSUS 302(b) ALLOCATION—FISCAL YEAR 1987—Continued

[Dollars in millions]

	Budget authority	Outlays
Defense—360 radar on Coast Guard airplanes	45	6
Enhanced intelligence collection	12	10
Helicopter and 4 Aerostat radar	90	12
Refurbish and replace E2C	138	12
Transfer 4 helicopters—operations and maintenance	13	10
United States/Bahamas task force	15	9
Total defense	377	75
Transportation		
Coast Guard aquisition, construction, and improvement	114	42
Coast Guard operating expenses	39	14
Total transportation	153	56
Foreign assistance		
Agency for International Development	3	2
Narcotics foreign assistance	63	23
Total foreign assistance	66	24
Labor, Health and Human Services		
Action grants	3	2
Alcohol, drug abuse, and mental health service grant	175	141
Drug-free learning—State Grant Program	150	12
Indian Programs	52	29
National Institute on Drug Abuse	13	9
National plan/studies	1	1
Transfer to veteran's medical care	11	9
Youth suicide information	1	1
Total Labor, Health and Human Services	407	205
Treasury, Postal		
Customs Forfeiture Fund	20	20
Customs operations and maintenance—air interdiction	50	28
Customs—salaries and expenses	66	60
Intelligence Center C-3I	25	14
Total Treasury, Postal	161	122
Total increase	1,462	632
Senate, CR appropriations versus 302(b) allocation	(7,300)	(200)
Senate appropriations plus drug bill versus 302(b) allocation	(5,838)	432

Note: Preliminary SBC estimates.

Mr. HOLLINGS. Mr. President after years of program cuts and indifference, Congress and the President have finally got the message on drugs. The American people are tired of hearing about athletes dead from overdoses, pushers plying their trade with brazen openness, entertainers glamorizing this sickness on TV and in movies. The people want more than lip service and exhortation. They want action, and they want it now.

There are those who question the motives and commitment of elected officials who are belatedly jumping on this antidrug bandwagon. Well, I am not among them. I say, if it takes an election year to stir politicians to action, then so be it. If it takes the death of a gifted young basketball player or the spread of an insidious new form of cocaine to rouse the public's ire, then so be it. Let us seize the moment and take decisive action to deal with this menance.

Truly, the drug problem has reached grotesque proportions in our Nation. Estimates of the size of the narcotics industry go as high as $110 billion a year. Five percent of high school seniors smoke marijuana on a daily basis. The number of cocaine-related deaths has tripled since 1981. In New York and Washington, DC, according to a recent study, 56 precent of crime suspects are using drugs at the time of arrest.

We must face the reality, too, that we are dealing with a deeply entrenched enemy, a fifth column whose recruits have infiltrated our schools and playgrounds, our factories and offices. Federal seizures of cocaine have increased tenfold in 5 years, but the available supply on the street has not been dented. Two years ago, a huge cocaine factory in Colombia was seized by U.S. agents—a cocaine city in the jungle, complete with airport, dormitories, and hospital. Ten tons of pure cocaine were seized. But the impact was nonexistent. The narcotics market didn't skip a beat.

Confronted with these facts, we become pessimistic if not fatalistic. It is tempting to think of drug control as the unwinnable Vietnam war of law enforcement. And, yes, we must acknowledge up front that there will be no final victory in this war on narcotics. But we must wage it nonetheless.

And no war should be fought by half measures. We must give our agents the money and equipment and manpower to do the job. And we must make clear our national resolve to wage this war without compromise. The words of Winston churchill at the outset of a different war are strangely appropriate to this new scourge: "We shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills."

The Senate bill sets forth a policy of carrots and sticks: Carrots for the addicts and abusers who are willing to accept help, sticks for the producers, distributors, and retailers who are killing our children.

Inevitably, the question is asked, "Can we afford to wage this war?" The obvious reply is that we cannot afford not to. By declaring war on drugs, are we surrendering in the battle of the budget? The answer is "Of course not." Gramm-Rudman-Hollings was never intended as austerity for the sake of austerity. It called for setting budget priorities and paying in full for programs that are essential to the national welfare. This bill does not stand in the way of our meeting the Gramm-Rudman-Hollings targets for fiscal year 1987.

The fact is, only the Federal Government has the resources and national focus to confront the narcotics crisis. We cannot shirk our responsibility. But, I repeat, even the full panoply of Federal resources—Customs, the FBI, DEA—is not going to solve this problem. There are limits to what we can accomplish on the supply side, by stepping up interdiction, enforcement, and so forth.

We must also fight this narcotics war on the demand side. Mrs. Reagan has the right idea with her "Just Say No" campaign. To win this war, we must first win the hearts and minds of American youth. This means saying no not only to drug use, but to TV programs and movies that glamorize drugs, and to the whole notion that drug use is socially acceptable behavior.

And this is where every citizen has a role to play. For too long—going back to the 1960's—this society one way or another has made excuses for drug use. The biggest lie of all is that drug use is somehow a matter of personal freedom or self-expression. We need a new attitude, an attitude not just of passive abstinence, but of aggressive intolerance toward drug use—whether in social settings, in the workplace, or wherever this sickness rears its ugly head.

Mr. BENTSEN. Mr. President, once in a great while an issue comes before this body that is compelling in the extreme. When that happens, the Senate is often able to act with a near-unanimity that confuses those on the outside and leads critics to suggest that the issues have not been properly considered or that legislative measures have not been thoroughly researched. I have been hearing this criticism from some individuals and organization with regard to the antidrug legislation that we are debating today. While I understand their concern, I reject their conclusion.

While the totality of the antidrug package that we now have before us is more complete and comprehensive than anything we have looked at in one piece in the past, the concern that many of us have with illegal drugs is not something that originated with cover stories in Time and Newsweek.

There are suggestions that the illegal drug problem has been exaggerated by a sensationalist media, and I certainly do not underestimate their ability to take a small fire and turn it into a conflagration. But there is no doubt in my mind that there is a fire out there, and whether it has reached the proportions of a conflagration is not the point. I say it is not the point because in my own State of Texas, I can look at the cold, hard statistics regarding cocaine seizures and know that we have a genuine problem with illegal drugs in this country today.

In 1983, there was a total of 9 pounds—that is correct—9 pounds of cocaine seized along the Texas-Mexico border. In 1984, that amount increased to 436 pounds. By 1985, 846 pounds of cocaine were seized in just one load in south Texas, and the total for the year for the southwest region, which includes Texas, was well over 3,000 pounds. For 1986, the total is undoubtedly higher yet. Cynics might suggest

that sure, the amount is higher because there were more agents from the Drug Enforcement Administration assigned to the area. I wish that were the case.

In point of fact, while the amount of cocaine seized was going up dramatically, the number of DEA agents assigned to Texas leaped from 180 in 1979 all the way to 184, 5 years later. Four more men. Not much of an explanation, is it?

Or, you might want to look at the number of cases of cocaine poisoning that reach hospital emergency rooms. There are two Texas cities, San Antonio and Dallas, that participate in the Drug Abuse Warning Network that provides statistical information to DEA. From 1982 to 1985, cocaine abuse emergencies jumped from 22 to 194 in Dallas and from 6 to 39 in San Antonio. This is roughly a sixfold increase in 4 years. And let me tell you something. Texas ranks at or near the bottom of the 50 States in cocaine-related hospital emergencies.

No, the smuggling of illegal narcotics into the United States is getting worse, and this is a problem that must be dealt with at the Federal level. The problem is not one that can appropriately be countered at the State level alone, though State authorities are certainly doing what they can in this area. As far as I am concerned, the responsibility for keeping our borders secure, whether it is to defend us against a foreign army or an invasion of drugs, is properly a national one. I believe that the bill we have before us is a good one, representing a comprehensive approach to a problem that compels our attention.

It is a bill that was developed in a bipartisan fashion, reflecting the fact that the problem of illegal drugs is not something on which our two political parties hold differing views. It is not a perfect measure—no piece of legislation ever is—but it is a reasoned bill, and it is a reasonable bill.

Among other provisions, it includes funding for additional interdiction efforts directed at the borders of our country; it includes increased punishment for those who smuggle illegal drugs across our borders; it provides penalties for those who operate common carriers while under the influence of illegal drugs or alcohol. In a section that I, as a member of the Select Committee on Intelligence believe is particularly good, it recognizes the role that our intelligence community can play in combating the international narcotics trade and increases the priority that the Director of Central Intelligence should place on this task.

Finally, the bill we are considering today includes significant increases in the amount of funding devoted to educational efforts directed specifically at discouraging our young people from ever beginning to use illegal drugs. Many of us once held a vision of the drug addict as a dilapidated bum of the skidrow variety. Today, the person who regularly uses cocaine or marijuana is just as likely to be the child from the middle class.

According to figures from the National Institute on Drug Abuse, some 17 percent of high school seniors in 1985 had tried cocaine. That is one out of six seniors, and that was before the widespread availability of "crack," the cheap variety of cocaine that seems to be sweeping the Nation. Some individuals are saying that one-sixth is not all that bad. Well, I believe it is appalling, and I believe it is a percentage that will rise significantly if we do not as a nation commit ourselves to combating this scourge.

I have not mentioned every provision in the bill before us today. It is a lengthy measure that represents the combined efforts of many knowledgeable and dedicated individuals. It is a bill that can make an impact on the drug problem here in this country. It will strengthen our law enforcement agencies and say to drug traffickers across the world, "We are ready for you and we will not allow you to win." In the end, though, the best weapon we have against these criminals is the American people themselves.

I receive scores of letters and telephone calls from the citizens of Texas every week, and their message is almost uniformly the same: give us the help we need, because we cannot do it alone. This bill provides that help. The American people deserve a fighting chance in this battle against illegal drugs, and I believe this bill will give it to them.

SUPPORT FOR CRIME LABORATORIES

Mr. COCHRAN. As we consider this important legislation to provide additional resources for law enforcement capabilities in the war against illegal drugs, I feel it is important that we not overlook a vital element in the prosecution of drug offenders. That element is the processing of evidence seized by our law enforcement agencies.

All evidence seized in the apprehension of persons who possess or deal in illegal drugs must be examined by and processed through our law enforcement crime laboratories. The crime labs and the work performed in the crime labs are an essential step in the effective investigation and prosecution of drug crimes. It is vital, therefore, that we recognize the need for additional resources for our crime labs as we provide direction and funds to our States for law enforcement and prosecution efforts.

It was my intention to offer an amendment to the drug legislation to ensure that sufficient resources are provided to our crime labs in order that they may carry out their duties effectively. I understand that the bill establishes a Drug Law Enforcement Grant Program under the Department of Justice and authorizes $115 million in 1987, and the same amount in each of the following 2 years, for State grants for drug law enforcement. Is this correct?

Mr. THURMOND That is correct.

Mr. COCHRAN. It is my understanding that these State grants are to be used to provide additional resources for apprehension and prosecution of drug offenders. Is there any earmarking in the bill to ensure that crime labs will receive support as part of this Grant Program?

Mr. THURMOND. The bill does not earmark specific expenditures for the Grant Program, so that State authorities may use their discretion to ensure that this money is directed where it is most urgently needed. However, the bill does include specific language directing that the States utilize these grants to provide additional resources for upgrading and increasing the number of law enforcement crime laboratories.

Mr. COCHRAN. I feel it is important that we send a clear signal to the Attorney General and to State authorities who will be implementing this grant program of the intention of Congress that crime labs be provided additional resources from the funds we authorize in this drug package. If our interdiction, investigation, and prosecution efforts are to be effective, we must ensure that our crime labs are provided with the necessary resources to examine and evaluate the evidence gathered in drug crimes.

Mr. THURMOND. The Senator from Mississippi is correct and I am pleased that the bill draws attention to the need for additional support for law enforcement crime labs.

Mr. COCHRAN. Thank you, Mr. Chairman.

Mr. CRANSTON. Mr. President, as we debate the details of the Anti-Drug Abuse Act of 1986, I want to pay tribute to the bipartisan leadership which has helped us craft this measure in its present form.

As one who has long supported stepped-up Federal efforts to combat drug abuse, and who has authored important legislation in this area, I know that many Americans are voicing deep concern about illegal drugs and the effects they are having in our communities.

In responding to this concern—which is not new, but rather, intensified of late—there certainly is present the danger that Congress may go overboard in its response.

But, I believe that Senators DOLE and BYRD have made every effort, through their consultations with the Members of this body, in formulating the package before us, to try to ensure

that we have a chance to adopt a truly bipartisan bill that can muster the overwhelming support of this body.

But, Mr. President, such a bill will result only if the Senate finds a way to avoid the problems that a few of the bill's present provisions and many of the controversial amendments waiting in the wings pose.

Mr. President, I am proud to have played a role in crafting this bill. It demonstrates the serious intent to this Congress to crack down on the flow of dangerous drugs flooding our country.

It is designed to help rid our streets of those who profit from illicit drug distribution, and those whose crimes under the influence of drugs or to support their drug habits have terrorized so many in our communities.

In its present form, I believe much of this bill provides America with a base from which local governments and communities can carry on the very arduous, but necessary, task of removing dangerous drugs from our schools, homes, streets, and communities.

This legislation provides tremendous new resources to assist our efforts at law enforcement, international narcotics control, interdiction, education, treatment, and rehabilitation.

Specifically, S. 2878 stiffens penalties against drug traffickers, especially those dealing in cocaine and designer drugs. For the first time, it makes using children to distribute illegal drugs a Federal offense. It provides vital money to build more Federal prisons and to enable the Coast Guard, the Customs Service, and the Justice Department all to act more effectively against drug trafficking.

At last we have realized that if we are to be successful in combating drugs, we must keep the disease of addiction from spreading and help those who have been stricken, as well as put behind bars those who profit by spreading the disease.

It is clear that we must make, for really the first time, a major, effective effort at educating children, parents, and communities about the dangers of drug abuse and how to prevent it. Yet, at present, less than one-tenth of 1 percent of the Drug Enforcement Administration's budget and less than 1 percent of the Department of Education's budget is spent on those vital purposes.

That is fighting the battle against drugs with one hand tied behind our back, because so long as there is high demand for illegal drugs, there will be profiteers willing to violate laws and find ways to meet that demand.

Yet, despite all the expressions of concern, our Government is now supporting less activity on drug education and prevention than we did 6 years ago.

The bipartisan Senate package—far more than the administration or House proposals—seeks to correct the short-sighted short changing of these efforts.

In acting so swiftly and firmly to pass this major bill, I sincerely hope that our repulsion for illegal drugs and those who distribute them does not overwhelm our love of freedom, of individual rights, and of the Constitution that guarantees them.

I join in endorsing the great statement made early in this debate by the senior Senator from Arizona [Mr. GOLDWATER] on the dangers posed by amending this bill to involve military personnel in domestic law enforcement, as one example.

I also have my own concerns, which I know are shared by others, about the threat to freedom of the press and to the public's right to know, contained in the sweeping exemptions from the Freedom of Information Act in subtitle S of this bill.

Drug trafficking is a business in which huge amounts of cash are available to tempt those who may be corruptible. Well-intended provisions aimed at preventing disclosure of law enforcement activities to those who are its targets can also be used to keep evidence of corruption from public scrutiny. I will support anticipated efforts to improve this section.

There are always risks in acting hastily in the belief that doing anything one can think of about the drug problem is better than doing nothing at all.

I remind my colleagues of a historical example of how haste in the war on drugs may make waste.

Several years ago, a floor amendment was offered by several Senators concerned about drug production in Colombia. The Senate Foreign Relations Committee had already considered and rejected this proposal, but not out of any lack of concern about drug production.

The Foreign Relations Committee was, at the time, engaged in a detailed study of how past United States aid to Colombian authorities had been misused—apparently, to line the pockets of those conducting drug trade.

Many Foreign Relations Committee Senators of both parties urged the Senate to await completion of this formal, bipartisan staff investigation before spending even more money on the Colombian drug problem.

Congress has appropriated some $64 million for Colombian drug interdiction efforts in the past 20 years.

Nevertheless, some of my colleagues persisted in offering an amendment to add on money for Colombian drug interdiction.

Senators LUGAR and PELL, STEVENS and KASSEBAUM, and I joined with many colleagues in opposing the floor add-on.

Subsequently, the bipartisan Foreign Relations Committee investigation concluded that the Colombian Program was so corrupt that the United States needed first to reform the antidrug cooperation effort before wasting additional taxpayer money on it.

That was not a weak moment in the war on drugs, Mr. President, but an attempt to make the war on drugs stronger and more effective,

I am submitting for the record a detailed analysis of the Colombian drug issue, prepared by members of the Foreign Relations Committee staff. I ask unanimous consent that the analysis appear in the RECORD at this point.

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

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, September 25, 1986.

To: Senator Cranston.
From: Gerald E. Connolly and Peter Galbraith.
Subject: Colombian narcotics amendment to 1979 Foreign Assistance legislation.

This is in response to your request for background information on the Senate's consideration in 1979 of an amendment to earmark $16.6 million in narcotics control assistance for Colombia.

The issue was first raised in the Senate during the Foreign Relations Committee consideration of S. 584, the 1979 Foreign Assistance legislation. Senator Jacob Javists, then the ranking minority member, proposed an amendment to add $16.6 million for Colombia. The funds—which constituted an eight-fold increase in the Colombia program—were to be used to buy aircraft, helicopters, and other transport to support a Colombian military anti-narcotics drive in the Guajira Peninsula.

Senator Church opposed the Javits amendment, noting:

"I am told by the staff that the problem in connection with this whole program in Colombia is that the corruption is so bad that we are not achieving our objectives and the money is just being siphoned away. I am told that, among other things, the jail in the capital is so corrupt that the army has quite sending smugglers there. The objective I think is fine, but I would just wonder if we would be wasting the money."

The Committee then agreed to defer the amendment, pending a staff study of whether the funds would be effectively used. Peter Galbraith and Gerald Decker (now no longer on the Committee staff) were assigned to investigate the corruption charges including allegations of collusion between the military involved in the anti-narcotics effort and the drug kingpins.

On May 22, 1979, while the staff study was underway, the Senate took up S. 584, the Foreign Assistance bill. Senator DeConcini again proposed adding the $16.6 million for Colombia.

The Foreign Relations Committee managers of the bill asked Senator DeConcini to withdraw his amendment, pending completion of the staff study. Both managers noted that the $16.6 million was already in the House passed bill and assured the Senate that, unless the staff study found serious corruption in Colombia's anti-drug effort, the Senate would accept the House money. Senator DeConcini nonetheless pressed for a vote and prevailed 65–29.

The Senate vote made the staff study moot and as a result no final staff report was filed. As it turned out, the staff investigation did find substantial evidence of corruption in the Colombia anti-narcotics effort. This corruption extended to the military's Guajira campaign (which was to be the prime beneficiary of the $16.6 million) and indeed the investigation supported the notion that the Guajira campaign had done more to corrupt the military than to wipe out narcotics. A key finding, from a draft of the staff study is as follows:

"The disruption (of the flow of marijuana in the Guajira) appears to have been only temporary. In spite of the ongoing campaign, DEA analysts tell us that the flow of marijuana from Columbia has now exceeded the flow in the months immediately preceeding the Guajira campaign. One senior analyst offered a simple explanation for this turn of events: He hypothesizes that when the military first moved into the Guajira, it disrupted the established patterns of corruption between local officials and the traffickers. Also, in order to establish themselves as the dominant force in the area, the military made some large seizures. Now, the analyst told us, the smugglers have made their arrangements with the appropriate military authorities and trafficking patterns are back to normal."

It is important to note that it was precisely the Guajira campaign that the DeConcini amendment was designed to assist—the very program that federal officials and analysts were warning was rife with corruption and inefficiencies. It was out of concern that these funds would not be put to the proper uses for which they were intended that the Committee did not support the $16.6 million add-on.

Just this year Committee staff (including Gerald E. Connolly) travelled to Colombia to review the current program there, and to assess the benefits of past aid efforts in the fight against drugs. The staff report concluded the following about the anti-narcotics efforts in Colombia before 1984:

"Prior to that time the narcotics control strategy had been a haphazard effort by the military, and the National Police, to interdict large shipments of marijuana or cocaine, and to seize and destroy the odd laboratory that might have been located in the countryside. Serious interdiction of the major trafficking routes almost never occurred, and eradication efforts were given lip service at best. *In fact, the State Department has reviewed the past U.S. assistance program there—including a major Congressional initiative that provided $16 million to provide patrol boats for interdiction, and numerous vehicles for army sweeps of areas known to harbor narcotics producers and traffickers—and judged much of it unsuccessful.* Traffickers were operating with impunity and the quantities of cocaine and marijuana originating in Colombia were greater than ever. *After the unhappy experience (in 1978-79) of the military narcotics sweeps which had led to some very serious corruption of high ranking officers in the Colombian military,* Colombia reorganized its narcotics control apparatus designating the National Police as primarily responsible for anti-narcotics strategies." (Italic added for emphasis.)

It is important to stress that in private briefings by federal officials here in Washington, and at the embassy in Bogota, no analyst disagreed with the assertion that the special $16.6 million Colombian effort had indeed been unsuccessful, and essentially a waste of U.S. resources because (a) the military receiving the equipment were corrupted; (b) the Colombians themselves had not at that time committed themselves to a serious anti-narcotics strategy; (c) other instrumentalities, such as extradition agreements with the U.S., and the establishment of a specially designated anti-narcotics police unit, were not yet in place. No one briefing staff earlier this year on the Colombian program, seven years after the adoption of the DeConcini amendment, could cite a single accomplishment or benefit that accrued from the provision of that money.

PREVENTION, TREATMENT AND REHABILITATION

Mr. CRANSTON. Mr. President, I am very pleased that this bipartisan bill, like the Senate Democratic bill, includes significant provisions on education, prevention, treatment, and rehabilitation.

I will be addressing separately a provision included in the bill at my initiative to increase support for the Veterans' Administration drug and alcohol treatment and rehabilitation efforts.

S. 2878 would help remedy the deficiency in our drug education efforts, which I mentioned earlier, by authorizing the establishment of a new school- and community-based education program. This program would provide direct financial and technical assistance to schools and community-based organizations to develop sound drug abuse education and prevention programs.

Every school and community must become actively involved in increasing public awareness about cocaine and other drug problems and in developing strategies to combat them. This legislation would promote getting that job done.

Mr. President, I am very pleased and proud that California already has one such effort underway. The Californians for Drug-Free Youth, Inc., a statewide organization encompassing many local parent community groups, is sponsoring—along with the California Department of Drug and Alcohol programs—a statewide public education program on drug abuse.

This program—called the Red Ribbon Campaign—will be conducted during the week of October 27.

Private undertakings like this can help the overall effort greatly.

S. 2878 will also expand our efforts to help drug and alcohol abusers break their addiction.

Too often, people who desperately want to get clean are turned away from treatment programs that lack the funding to serve them.

We must help addicts break the cycle of addiction to give them a fresh start on life. This bill will provide a separate block of funding specifically targeted to treat and rehabilitate substance abusers.

Mr. President, we have put together a bill strongly supported by a bipartisan coalition, which can make a major difference in the war against drugs.

Our task is to keep this legislation free of divisive amendments which will fragment the coalition and prevent prompt enactment of what is now a basically sensible bill.

Mr. ROTH. Mr. President, it's been said that the future of America marches forward on the feet of our youth, and although the term "milestone" is oven overused, I am hopeful that as far as our youth are concerned we are about to pass a major one.

When we discuss the dangers that affect our country, drug abuse must be at the top of the list. Nothing challenges the future of America more than the internal decay caused by drug abuse, and demographics of illegal use show that we are far from declaring victory in our on-going war with narcotics. More than 24 million Americans, more than one-tenth of our population, experiment with cocaine. Surveys show that seniors in the class of 1985 are using this drug at unprecedented levels. Over 32 million Americans smoke marijuana at least once a year. Twenty million smoke it at least once a month, these include 29 percent of our high school seniors. Several million others take hallucinogens, stimulants, sedatives, and tranquilizers without medical supervision.

I once heard the task of turning back the spread of illegal drugs likened to turning back the tide with a teaspoon. I hope that with this legislation those days are numbered. Hopefully, this Senate proposal will resolve some of the grey areas of law that mire our drug enforcement officials. I believe this legislature is a good start, and those many distinguished Members of this body who worked on it should be commended. We all know that there is more that can be done, but this bill will increase our odds of winning the fight against those who try to contaminate and destroy our Nation's young people—quite literally our most precious natural resource.

And this is good news to me. As chairman of the Permanent Subcommittee on Investigations, I have been concerned with the dangerous trends in drug abuse. I've held hearings to examine the trafficking and abuse of narcotics such as crack, and I've proposed provisions that will help our drug enforcement officers fight back. Part of these include provisions that will make it illegal to launder drug money, that will outlaw drug paraphernalia, and that will increase penalties for those who manufacture and distribute drugs near a school or use children at their runners.

I'm delighted that this package before us makes use of these proposals. And I appreciate the opportunity I've had to work closely with leadership on both sides of the aisle and in cooperation with other Senate committees to create this important legis-

lation. I'm also pleased that our fight against drug abuse goes further than simply focusing on our youth. As chairman of the Committee on Governmental Affairs, I was able to work closely with many of my distinguished colleagues to close an unnecessary loophole in the law relating to civil servants.

Again, Mr. President, the measures we are taking today are only steps on a long and difficult road to a drug-free society. There is so much more to do, if, indeed, this drug-free society is to exist. But these are good, solid steps. The unity demonstrated by this distinguished body portends that such a society may be possible. There is common resolve in all branches of Government, and it represents an important opportunity for progress. The time has come for us to chart a new course for public policy, to commit our resources for lasting solutions, and to keep this issue as a viable component of our national agenda.

Mr. SYMMS. Mr. President, the Senate has taken a great step in an effort to control the use and abuse of illegal drugs. The American public has requested increasing the assistance of the Federal Government by introducing legislation aimed at this very serious problem. Although I believe in a restricted central government, I feel limited Federal assistance is necessary in maintaining the safety and well-being of every American, especially in the area of drug enforcement. I am very pleased to see this body take such a responsible role.

The 97th and the 98th Congresses were "banner" sessions in passing legislation to control illegal drugs. This session will prove to be even greater with the passage of tougher laws and improved enforcement. I am pleased the Senate has been kept well informed on this issue, thanks to several of our colleagues. But none have responded to this increasing problem as much as my friend and colleague from Florida, Senator HAWKINS. I wish to commend her for her perseverance on this issue. In 1981, I joined Senator HAWKINS and several other of my colleagues in forming the U.S. Senate Drug Enforcement Caucus. I am proud to be a member of this group in our continuing efforts to combat drug abuse and provide stricter enforcement of our narcotics laws.

Mr. President, I am very concerned about the issue of drug abuse in our Nation, and the State of Idaho. In Idaho, we have a marijuana, cocaine, and heroin problem. Although heroin is not as common as the other drugs, in the past 2 years, it has become an increasing concern among law enforcement agencies. Moreover, when speaking with Idaho's law enforcement officials on this issue, I found it very interesting that 50 percent of all major crimes committed in Idaho were drug related. Drug abuse is not an issue based on population. It is not confined to our large metropolitan areas. It is a major issue in every State and every town in the Nation, regardless of size.

What concerns me is the use of drugs among our youth. I have heard many stories that drug users are getting younger all the time. First, it was our college students using drugs. Then drugs were introduced to our high school students. Now it has reared its ugly head in our grade schools. This is very distressing, and I'm sure it is even more disturbing for the mothers and fathers who receive a telephone call from their child's school principal to learn that their 9- or 10-year-old child was using illegal drugs. Most of us in this body are parents, and I'm sure each would find such a telephone call terribly frightening. As Congress has taken a responsible role, so must our parents, teachers, and other elected officials. We must educate our children early, on the facts about drugs. Given the proper education, I believe our youth will realize the importance of staying away from this menacing problem. They are our greatest resource. We must put our trust in them, and develop their sense of responsibility. Responsibility for their own lives, and in the years to come, responsibility to others.

We have been asked to perform a task. That task is to cut the use and distribution of drugs. Mr. President, we are on the verge of completing this monumental task. I am hopeful we can finish the debate on this issue, pass an appropriate piece of legislation that is acceptable to both Houses, and move this through for the President's signature.

Again, I commend the dedicated Senator from Florida, and I also commend the able majority leader in his moving this important bill so expeditiously.

PROGRAM SUPPORT MONEYS FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. WEICKER. Mr. President, during this time that we have debated and discussed ways of reducing drug trafficking in our Nation, and ways of increasing treatment and prevention of alcohol and drug abuse in our country, we have directed the Department of Health and Human Services, through the Alcohol, Drug Abuse and Mental Health Administration, to help in these efforts. Specifically, we have asked the Department of Health and Human Services to assist in the new treatment programs under title IV, subtitle A and the education and prevention programs under title IV, subtitle B. We are also requiring the expansion of the current alcohol and drug abuse clearinghouses maintained at the Alcohol, Drug Abuse and Mental Health Administration, requiring several studies to be undertaken at the Department of Health and Human Services, and that the Department of Education coordinate and report to Congress on State education and prevention activities. Nowhere in this bill is there a line item authority to pay for these additional and necessary activities.

Mr. HATCH. That is correct. It is my understanding that program support for the Alcohol, Drug Abuse and Mental Health Administration is funded under existing authority of the Public Health Service Act. However, I do agree with you that we have given a stronger mission to the Alcohol, Drug Abuse and Mental Health Administration through this legislation that will require an increase in support funding.

Mr. WEICKER. Would you agree to up to 1½ percent of the new money for education, prevention, and treatment for program support at ADAMHA in order to gain the financial resources to carry out the provisions of this new legislation?

Mr. HATCH. I would strongly support the chairman of the Senate Appropriations Subcommittee on Labor/HHS and Education in providing funding for the support services of the Alcohol, Drug Abuse and Mental Health Administration.

Mr. PRESSLER. Mr. President, I ask unanimous consent to ask a question of the distinguished Senator from Utah, the chairman of the Senate Committee on Labor and Human Resources, without losing my right to the floor. I understand that the language of amendment No. 2866 which I introduced on Monday and is filed at the desk, has been incorporated into the comprehensive drug legislation we are now considering. Is that correct?

Mr. HATCH. I would like to thank my friend and distinguished colleague from South Dakota for bringing this issue to the attention of the bipartisan task force on education, prevention, and treatment. Section 4116 does contain amendment No. 2866, a provision relating to a sense of the Senate resolution urging the motion picture industry to incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict alcohol and drug use in a favorable light. I commend my colleague from South Dakota for bringing this issue to the attention of the Congress. He, along with other members of the task force including Senator ABDNOR, Senator HAWKINS, and Senator CHILES, deserve praise from parents and children around the country. The war on drugs must be fought on every front—with all the ammunition we can muster. The glamorization of drugs in movies sends a very wrong message to everyone, especially our young people. Senator PRESSLER and others have done a tremendous service to our Nation.

Mr. PRESSLER. I thank my good friend and would like to commend him and Senators HAWKINS, DOLE, and others for agreeing to include this important amendment in the drug abuse legislation. I also want to thank Senators BOREN and NICKLES who are cosponsors of my amendment. I understand that Senator BOREN also wishes to speak briefly on this subject.

I will not take up much of the Senate's time, but I wish to take a few minutes to discuss the content of the Pressler-Boren amendment. As you know, this is a sense of the Senate resolution which calls on the Motion Picture Association of America to adopt a subcategory "D" within its current rating system, for movies which clearly depict drug use in a benign or favorable light. Our amendment was endorsed by the National PTA, the National Association of Secondary School Principals, the American Association of School Administrators, the National Association of Elementary School Principals, and the American Association for Counseling and Development.

The purpose of this amendment is clear. Parents, teachers, school administrators, and others are desperately trying to teach our youth of the dangers of drug use. However, during their leisure, children and teenagers may be receiving a counseling and counterproductive message regarding drug use from the movies they see in their neighborhood movie theater. Many motion pictures specifically targeted for the youth market have depicted drug use in a casual and permissive manner. For this reason, I feel it is important that parents be given advance notification that a certain movie portrays drug use in this fashion.

The current movie rating system was created in 1968 for this reason—to provide parents with information necessary to make an informed decision about the movies their children wish to attend. I commend the Motion Picture Association for recognizing this need, and voluntarily adopting its current rating system. It is my hope that this bill will send a clear signal to the motion picture industry that we need their help to successfully fight the war on drugs.

Mr. HATCH. During President Reagan's first term in office, his wife, Nancy, began a national crusade to educate parents, young people—indeed all Americans—to the real dangers of drug abuse. The First Lady lent her prestige to help publicize the problem and the availability of services to individuals in need of help. The President instructed his Cabinet officers to begin to address this problem head on.

And each year, the leadership of the House of Representatives turned a deaf ear on the cries of parents, husbands, wives, and children who urged that tough legislation be enacted to get the drug pushers and kingpins off the streets. But this summer, Members of the other legislative body got the message, and when they did, they moved full speed ahead to get a bill passed. A few years ago, a song at the top of the charts was entitled "Too Much, Too Little, Too Late." Not only does that phrase make for a catchy rock lyric, I think it accurately describes the bill that was sent over from the House.

But let me add a few lines to that lyric today. I'll start with too happy. Those of us who have been fighting for years to eradicate this scourge are only too happy to welcome our colleagues whose interest in this issue has suddenly been piqued. We're happy to take this opportunity to acquaint them with some of the programs we've been supporting, to direct some of their newfound energies to making existing programs work better, and to harness some of this momentum into pushing some new initiatives along the same path.

When you consider the fact that more than one in four young adults has tried cocaine, and three of five high school seniors have tried an illegal drug, we know there is too much drug abuse. When we know that workers on drugs are nearly 30 percent less productive than their peers, we know that too many lives are being wasted.

When the amount of cocaine entering this country has quadrupled in a decade, we know too little has been done to slow the rising demand for this poison. And when the national cost of drug abuse has been estimated at $60 billion for 1983 alone, we know that we are too late in making the fight against drug abuse a national priority.

First, however, I think my colleagues should understand that getting tough on drug abuse means more than reconnaissance planes, jail cells, and glass jars—although I can't help but observe that many of the toughest talkers today have been purring pussycats on those subjects in the past. It means education, prevention, treatment, rehabilitation, and research.

Certainly, we have made much progress in the drug crisis in recent years. Thirty-seven Federal agencies are working together in a vigorous national effort. Through legislation such as the Comprehensive Crime Control Act, we have increased seizures of illegal drugs. In 1985 alone, over 10,000 drug criminals were convicted, and nearly $250 million of their assets were seized by the Drug Enforcement Administration.

In addition, individual use of drugs has dropped: In 4 years the number of high school seniors using marijuana on a daily basis has dropped from 1 in 14 to 1 in 20, and the military has cut the use of illegal drugs among its personnel by 67 percent since 1980. In this important effort, by next year spending for drug law enforcement will have more than tripled from its 1981 levels.

And, we're making some progress in the area of treatment and prevention. In fiscal year 1986, 78.2 percent of all the money in the Alcohol, Drug Abuse, and Mental Block Grant Program was used for treatment services. In it is estimated that 1,410 drug treatment units were funded while another 2,115 units were able to offer both drug and alcohol treatment programs. More than 300,000 persons were treated in publicly funded drug rehabilitation centers. And many individuals were treated in private rehabilitation centers.

However, despite these efforts, illegal cocaine is coming into our country at alarming levels. It is estimated that 4 to 5 million people are regular cocaine users. One in twelve persons smokes marijuana regularly. Five hundred thousand Americans are addicted to heroin. Nationwide, law enforcement officials are overwhelmed by increasing availability of drugs and growing crime rates in rural as well as urban areas. In fact, drug traffickers outman our efforts and outclass our high-tech communication systems, radar systems, and intelligence networks with their sophisticated technologies.

And I'm sure some of my colleagues will be gratified to hear that this is one issue we cannot approach just from the supply side. Even if we comb every inch of border, prosecute and even execute every pusher, and kick every kid using drugs out of school, we will never end this plague unless we dry up the demand for drugs.

On the research front, the National Institute on Drug Abuse has made strides in the areas of cause of use and abuse; trends in use; the abuse of potential new drugs, including so-called "designer drugs." NIDA has placed particular emphasis to the problem of drug-abusing women and their children. And NIDA has gotten that information to the public, other researchers and treatment staff through an aggressive dissemination campaign.

Several programs under the jurisdiction of the Senate Labor and Human Resources Committee, which I chair, are already addressing the drug problem from that angle. The legislation we are considering today will increase funding for the ADMS block grant. It will provide funds for model community programs that will serve the populations that are most at risk so that we can get the help to those who need it. And the States will be given more flexibility in their use of these funds.

The bill directs the Secretary of Education with the assistance of the Secretary of Health and Human Services to establish a new block grant program that will provide the money to

fund drug education and prevention programs in both schools and communities. This program to be administered by the Governors of each State is primarily aimed at but not limited to getting help to young people both in and out of school. Because right now, our children may be receiving drug education of the very worst kind—through personal experience.

And we've got to place greater emphasis on research. Research efforts by the National Institute on Alcohol and Alcoholism and the National Institute on Drug Abuse have helped expose the destructive influence of drugs, not just on users but on society as a whole. Research has debunked the theories of the Timothy Leary's and Peter Bourne's and others who alleged that occasional drug use would do no harm.

We will fund these institutes at higher levels—beef up their clearinghouse operations, help them warn Americans about the clear and present dangers of drug abuse, and enable NIDA to present a national plan to combat drugs to complement NIAAA's plan to combat alcoholism. And believe me, our new efforts will not be ridiculed like some of the earlier attempts, as in the film "Reefer Madness," for example.

But I also agree with my colleagues that we need new initiatives to fight drugs, and I believe we need to get the best and brightest minds from all facets of society together to come up with that battle plan. Again, I'm only too happy to welcome my colleagues to these ongoing efforts to get America to say no to drugs. But let me make one plea: Let's not abuse the issue of drug abuse. Let's not try for a political high for either party, for either body, for any individual, or for any branch of Government.

We must add one more line to our lyric: Too important. You see, critics of this drug abuse effort have already begun to crop up. They are charging that in the stampede to get out front on this issue, we are throwing too much money, trampling on civil rights and legal precedents, giving too much power to the military.

Some of the criticisms have a modicum of validity. But it's going to be pretty tough to convince me that any of those concerns fully outweigh the need for action, and action soon. Because this moment will pass too soon. Too soon, the interest in this issue will dissipate as quickly as it arose. Too soon, the elections which have spurred this drive for action will be over. Already, those opposing such action are trotting out numbers and statistics to support their position and taking their concerns to court. Partisan posturing would only serve to fuel such criticism, succor such opposition, encourage such dilatory action.

But I think we can overcome these problems because this is responsible legislation. Therefore, I believe we will overcome partisan fervor, overcome the usual obstructionism of the ACLU and employee representatives, overcome those who have a financial stake in the megabillion dollar drug trade. Why? Because America is too angry.

Parents are angry. I know, because I am a parent, and I have two precious and beautiful youngsters in high school. I am a grandparent with young ones heading for the elementary schools and playgrounds where, unbelievably, incredibly, tragically, most first-time experience with drugs now occurs. Today, parents can only hope and pray that they have prepared their youngsters to ward off the lethal parasites who will prey on them. And if these tender little lambs cannot escape the wolves, parents can only weep—rage and weep.

Teachers are angry—angry that they have given a lifetime to learning and to their work, only to find that their stoned students cannot take anything in and will not allow others to. Employers are angry—angry at the billions of dollars that drugs are draining from their workplaces and their retail establishments.

Doctors and nurses are angry—angry that treatment of drugs is taking so much of our medical resources, angry at having to nurse to a normal life tiny, innocent babies born already leashed to this vicious master they did not court and cannot understand.

Law enforcement people are angry—angry at the explosion of violent and vicious crime surrounding the production, distribution and use of drugs, angry at their helplessness to stop this scourge at its source.

And I'm angry, too—angry as a leader of this Nation trying to return our Nation to the greatness she once knew, watching our next generation, those whom we are trying to lead to a promised land of peace and prosperity, be washed away in a tidal wave of vile pills and potions. I see the bright smiles and sparkling eyes of our children giving way to broken wills, lost years, suicides, might-have-beens. I grieve and America grieves with me.

But today and in the days to come, we have a historic opportunity—maybe our only opportunity—to turn America's grief and anger into triumph. We have an opportunity to have more than too much, too little, too late—if we work together. Together Republican and Democrat, Senate and House, legislative and executive, public and private, parents, teachers, employers, enforcement personnel, politicians. Together, we can save the next generation from the dealers of death now seducing them. We can save America from ourselves.

STATE HIGH RISK YOUTH PROGRAMS

Mr. DODD. The "State High Risk Youth Programs" section of this package is based on S. 2800, "The Drug Abuse and Alcohol Abuse Prevention, Treatment and Rehabilitation Model Projects for High Risk Youth Act of 1986." I introduced S. 2800 as part of the comprehensive measure developed by the Democratic Task Force on Drug Abuse to target prevention and treatment services to children at risk.

We know that during adolescence, a significant number of young people are the victims of child abuse, drop out of school, run away from home, become teen parents, fail to get a job, remain economically disadvantaged, commit violent or delinquent acts, experience mental health problems, or attempt to injure themselves. Such young people are also at great risk of abusing drugs and alcohol.

In this era of limited resources, it makes good sense to target community-based prevention and treatment programs for children at risk which explore the connections between alcohol and drug abuse and the other risk factors delineated above.

Mr. HATCH. That is correct. Another group of young people at risk are those who have been identified as the children of substance abusers. They will also be targeted in the "State High Risk Youth" provisions of this bill.

Mr. DODD. Given that the funding mechanism for these programs was modified during negotiations on this bipartisan package, I would like to ask for some clarification. It is my understanding that the 5-percent set-aside for the State high risk youth programs is to be used for innovative, model community-based programs which provide multiple, coordinated services. In other words, States are directed to fund new multiple service approaches in their efforts to prevent and treat substance abuse among children at risk.

Mr. HATCH. The gentleman from Connecticut is correct.

Mr. DODD. It is further my understanding that the 5-percent set-aside for high risk youth will apply to both the authorization of appropriations for alcohol and drug abuse programs under the ADMS block grant and 5 percent of the new authorization for substance abuse treatment in this bill. If the programs are appropriated at the authorization level, that should amount to $25 million for fiscal year 1987.

Mr. HATCH. The Senator from Connecticut is correct.

Mr. DODD. Although I would have preferred further resources to be targeted toward those children who are at such high risk, I commend my colleague from Utah for agreeing to include the provisions described above in

this package. And I thank him for engaging in this colloquy with me.

Mr. GRASSLEY. Mr. President, some have contended that this bill and the bill passed by the House of Representatives earlier this month are little more than political gimmickry. But in my estimation, we might be more accurately accused by our critics of being deleterious in addressing the problem of drug abuse in our Nation. This bill comes as a much-needed step in what must be an ongoing effort to stamp out drug abuse.

Drug abuse is a serious problem on many levels. For those who use drugs, as well as their families and friends, it is a heartbreaking personal tragedy. But drug abuse is much more than just a personal tragedy. It is a national tragedy as well. It saps our vitality as a Nation, and seriously weakens our moral fabric. How many lives have been wasted, how many productive hours have been lost due to the effects of drug abuse?

The bill before us takes a comprehensive approach to dealing with this Nation's drug problem. That is entirely appropriate, because nothing less than a comprehensive approach will suffice to deal with our drug problem. This bill strengthens penalties for those who profit from the illicit drug trade in this country. It strengthens our efforts abroad to curb the production of illegal drugs, and to control the international drug trade. It takes needed steps at home to close our borders to the influx of illicit drugs. This bill also takes important steps in this country to attack the drug problem at its source. Through education and treatment, it seeks to discourage people, especially young people, from abusing drugs to begin with, and provides additional funding for programs to treat those who have, much to their regret, begun to abuse drugs.

But the importance of this legislation goes beyond the individual measures contemplated therein. Iowa has a nationally recognized model program, in which all institutions are emphasized and integrated. The Iowa program has demonstrated that you cannot isolate one institution in drug abuse prevention efforts and expect it to work. All institutions must play a role, including government, law enforcement and the courts, the church, media, and the schools. Like the Iowa program, this bill is greater than the sum of its parts because it will draw together a wide range of institutions—government at all levels, law enforcement and the courts, community- and parent-based organizations, and schools—with one end in mind: to end drug abuse in America.

This legislation is important on a symbolic level as well. Both Congress and the President are on record as being unalterably opposed to drug abuse. Not only are we unalterably opposed, but we have shown that we are at long last willing to take strong measures to eradicate drug abuse. I hope this legislation will create a climate in this country that is hostile to drug abuse. I hope it will help to bring an end to a certain state of mind that has tended in the past to wink at drug abuse, to ignore or underestimate its human costs and its moral implications.

Mr. President, I would like to compliment all who have had a hand in crafting this legislation. I hope that it will receive speedy approval by the Senate.

Mr. STENNIS. Mr. President, it pleases me that the U.S. Senate is focusing on a comprehensive approach to the drug problem which is growing at an alarming rate throughout our Nation. The drug epidemic demands our attention at this time; we cannot afford to delay. Drug abuse is tearing at the moral fiber of our society, taking a heavy toll on the potential of our young people in particular. This bipartisan legislative package offers real hope that the tide can be turned, and I commend every Member of this body who has had a part in putting this bill together and bringing it to the floor for action at this time.

Although much as been said about the sudden focus on drug abuse, this is by no means a new issue. As a youngster working in my uncle's drugstore in the small town where I grew up, I observed first hand the terrible effects of drug abuse on people who even then had become virtual slaves to drugs. Of course, the problem has increased dramatically since that time as illegal drugs have become more accessible to more and more people. Now the problem is widespread. No community, no matter how small, can consider itself immune to the problem of drug abuse, and no segment of our society and no age group can claim immunity. This is truly a national problem which threatens us all in a very real way.

Congress has tried to address the problem in various ways over recent years. We have made some very valuable initiatives through interdiction efforts, treatment, education, and enforcement. There are some good programs already in place.

We are now recognizing that more must be done in a comprehensive, coordinated effort. We have the resources to meet the challenge, and eagerness to act on this bill at this time is evidence of the determination of our entire Nation to tackle the drug problem head-on. We will not allow drug abuse to rob our Nation of its bright potential represented in the talent and abilities of our youth who are the primary target of drug traffickers.

Efforts to stem the flow of illegal drugs into our country through tougher interdiction have been underway for several years now. We have made some progress in better equipping agencies responsible for drug interdiction for the job they are called on to do, but the more we have done, the more we have seen that needed to be done. The sophisticated and well-financed operations of drug traffickers dwarfed our interdiction efforts as we have become increasingly aware of the magnitude of the problem.

I, myself, have been involved to a degree through the Appropriations Committee in beefing up our interdiction efforts—by providing more resources for our Coast Guard, Customs Service, and Drug Enforcement Administration in order to work more effectively in interdicting drugs smuggled into the United States on all fronts—land, sea, and air.

Obviously, we must do more. Estimates are that less than 15 percent of all drugs flowing into the country are now confiscated. Our drug enforcement agents are doing their best to combat the problem at our borders but it is clear that they are outgunned and outmanned. This package gives them more of what they need to get the job done. We cannot realistically hope to solve the problem through interdiction alone, but we can do more through provisions in this bill which will give us a fighting chance against traffickers.

Penalties for drug crimes have been toughened in recent years, but not enough. This bill strengthens the severity of those penalties and creates new criminal offenses in relation to the illegal drug industry. We must establish punishment that recognizes the severity of the crimes committed by those who deal drugs. These people are taking the very lives of the people to whom they sell drugs at huge profits. I applaud the proposal of a mandatory minimum sentence of 10 years without parole for major drug dealers. I believe that a 20-year minimum jail term is appropriate if a sale of drugs leads to the death of the user. We must make the punishment for these crimes more severe. There is no question that it should be unlawful to employ or use children in distributing these drugs and this bill calls for that.

There are also a lot of people on the fringes of drug trafficking and dealing who are providing support and assistance to drug dealers and are reaping huge profits. These profits come at the expense of the often innocent victims of drug abuse, and they come at the expense of our national productivity. These people may dress up in suits every day, and they may appear to be respected members of their communities, but they are truly the scum of the earth. They are the coconspirators who have brought about this problem for their own personal gain and who

will continue to exploit drug abuse victims as long as they can get by with it.

We are talking about a $100 billion a year industry which involves a lot of people in a lot of schemes to hide the money from authorities. We can do more when it comes to addressing money laundering and this bill provides a way. This so-called money laundering is certainly critical to the success of the whole illegal drug operation. We must penetrate these elaborate schemes which make illegally gained money appear to be legal.

This bill provides more assistance to our local and State law officials in enforcing State drug laws where much of the burden falls. I have been particularly concerned that our State crime laboratories which do the very important work of analyzing the evidence used in prosecuting these cases are often left out when talk turns to additional moneys. Our crime labs play a vital role and cannot be neglected as we attempt here to assist all the players in this battle against drugs.

In my State of Mississippi, I am familiar with the valuable work of our State crime laboratory. The personnel work tirelessly in analyzing the evidence that is so critical to successfully getting these criminals duly punished. Our lab also does much in the way of assisting Federal agencies such as the Drug Enforcement Agency, the U.S. Customs Service, and the Coast Guard when drugs are seized at our borders or interstate drug crimes are involved.

If this drug bill does what we want it to do, more arrests will be made, more testing of the drugs seized must be done. We must see that these State crime laboratories are adequately funded in order to carry out their important role. I am hopeful that through the grant program created in this legislation for drug law enforcement our State crime labs can be assisted in this vital work.

Certainly, no legislative proposal would be complete without focusing in a direct way on both the victims of drug abuse and the potential victims. It is when we bring the problem home to the human aspect that we gain the true momentum for action. When we look at how many young lives are ruined, how many dreams lost, how much potential destroyed, we know we must do more to fight this madness that plagues our society. Education, rehabilitation, and treatment are vital in this effort and I thank my colleagues for including these important provisions in the package.

Perhaps our greatest potential for success in the battle against drugs is in equipping our young people with the strength and fortitude to resist the temptation to experiment with drugs. There have been many attempts in the area of drug education in recent years, and we can now assess which programs have been most successful in reaching young people. We must duplicate those programs in schools throughout the country, and this bill gives us the means with which to do that.

Although I only touched on a few aspects of this critical legislation, the bottom line is that it provides the means for us to do more in addressing this problem and do it with a more coordinated approach. We all know that the legislative proposal before us cannot begin to be the cure-all. However, it lays the groundwork for a comprehensive strategy that won't just strike at the problem but will equip us to stage a long-term battle. It is a battle we cannot afford to lose if we hope to maintain our strength and vitality as a Nation. We must act on this problem promptly.

DRUG EDUCATION

Mr. PELL. The degree of drug abuse among school-aged youth is alarming. Close to two-thirds of all high school seniors have admitted use of drugs. And, this situation reaches down into the very early grades. One-third of all seventh graders report some illicit drug use.

Clearly, a massive assault on drug abuse must be launched in our schools. As frightening as this situation is, however, I must admit that I have severe reservations about the approach we are taking in this legislation. Quite simply, we do not have enough information on the education aspects of the problem. We do not know, for example, where the incidence of drug abuse is greatest. We therefore do not know how—or where—to effectively target the use of education funds. Beyond that, we cannot adequately identify model education and prevention programs. I am of the mind that we should have this important information before we act so precipitously.

At the same time, however, I recognize that we are faced with an emergency situation—one which requires immediate and direct attention in our schools. I do believe, therefore, that, subsequent to the passage of this legislation, we must have a very careful examination—and reexamination—of what we have done.

Mr. FORD. Mr. President, I rise today in support of S. 2878, the Anti-Drug Abuse Act. I am pleased that this important concern has been brought to the forefront as Congress attempts to tackle this epidemic problem.

This epidemic has had devastating effects on millions of Americans. Lives of drug users are being ruined and millions of families are suffering as a result.

Last week, I became a cosponsor of similar legislation, the Comprehensive Narcotics Control Act of 1986. This proposal was one of the first of the evolving attempts to find a solution of this ever-growing problem.

Kentucky law enforcement officials say that the problem is not yet epidemic in my home State. I am hopeful that this legislation will prevent that from ever happening.

I believe that the provision calling for demand reduction is the most important. If we can stop the demand for illegal drugs through education and rehabilitation, we are beginning to solve the problems of future generations. Our Nation's youth are our Nation's future. Passage of this legislation today will help ensure that the temptations of today will not face the youth of tomorrow.

Mr. LUGAR. Mr. President, the bipartisan drug legislation before us responds to the public outcry to battle drug abuse and trafficking at home and abroad. Americans have made their view clear: The flow of drugs into the United States and their abuse by Americans has gotten out of hand and they want it to stop. Drug abuse and trafficking undermines the emerging democracies of Latin America, has escalated crime on American streets, and has brought incalculable pain to numerous families.

The Senate has responded; and, in my view, in this bipartisan package, we have responded well. This legislation is a signal act in the long struggle to resist and defeat the abuse of illicit drugs. But it is only a step. In the words of Senator TRIBLE, who has made such a major contribution to this package, the war against drugs will not be won in the Halls of Congress or the corridors of the Justice Department. It will be won in the school yards, the church basements, and the communities of America. This comprehensive legislation tells the parents, teachers, and community leaders on the front lines of this struggle, "We're here to back you up."

The Foreign Relations Committee, in cooperation with the majority and minority leaders, fashioned several important initiatives contained in title II of the bill. Illicit drugs are flooding across our borders, and a part of any comprehensive antidrug strategy must be a campaign to reduce production abroad; $63 million in narcotics assistance moneys are authorized for our international programs to promote eradication of illicit crops and interdiction within the producing countries.

A major provision of title II is the revision of the Foreign Assistance Act governing conditions on assistance to major drug-producing and drug-transit countries. Under current law, the President must positively find a country to be taking inadequate steps in combating drug production and trafficking before foreign assistance is cut off. Despite the skyrocketing increases in production of illicit drugs overseas, no such determination has ever been

made by a President and submitted to Congress.

Under this package, foreign assistance will be withheld, negative votes in the MDB's will be mandated, no generalized system of preferences tariff benefits will be granted any major drug-producing or drug-transit country, unless the President annually certifies that the country has fully cooperated with the United States in combating narcotics or is taking adequate steps on its own. For an uncooperative country, the President may make a certification based on vital national interest grounds, but this certification, as well as any other certification, is open to a congressional resolution of disapproval under expedited procedures.

The effect of this legislation will be to place a sharply increased burden of proof on producing countries with the U.S. executive branch that the countries from which illicit narcotics originate live up to their promises of cooperation. In all honesty, I must say also that this legislation will place an added burden on the Congress to weigh carefully the costs and benefits of imposing sanctions on drug-producing or drug-transit countries. It will no longer be enough for Congress to say simply that the executive branch and the State Department aren't getting tough enough with drug-producing countries. Yearly, when the President's certification arrives, any Member will have an opportunity to introduce a resolution of disapproval if he or she is dissatisfied with the President's judgment and argue that position on the floor of the Senate.

This measure also contains a proposal sponsored by Senator TRIBLE, Senator HAWKINS, and myself which adds a country's willingness to cooperate with the United States in preventing money-laundering of drug moneys as a major factor to be considered in Presidential certifications making countries eligible for assistance. In addition, a very important proposal by Senator MURKOWSKI was included which amends present law forbidding U.S. narcotics enforcement personnel from participating in arrest actions overseas. Should this legislation pass, our drug enforcement personnel abroad will be able to assist in arrests but not make arrests directly. They also will be permitted to take appropriate self-defense actions.

Mr. President, title II contains a good number of other provisions: One changes the conditions on assistance to Bolivia in recognition of their cooperation in operation blast furnace; another imposes sanctions on countries whose officials engage in drug trafficking or fail to prosecute those responsible for killing and torturing our drug enforcement agents unless the President reports to Congress why the sanctions would be against our vital interests. But as important as these international initiatives are, drug abuse will be sharply curtailed when Americans begin to, in the words of the first Lady, "Just say no."

In this respect I would like to briefly acknowledge the leadership of Senator PAULA HAWKINS on the drug issue. For many months, hers was a lonely voice. Senators from both sides of the aisle have long been concerned with this issue, and I would especially mention here Senators BIDEN and DECONCINI. But, Senator HAWKINS' steadfast commitment to combating the menace of drugs, has brought into special focus for the Congress and the country the devastation wrought by drugs on young Americans' bodies, minds, and spirits.

Drugs have wrecked families, perhaps our Nation's most precious asset. Drugs have made it unsafe to walk what were once safe streets. Drugs have so empowered international criminal syndicates that they threaten to topple the newly emerging democracies of Latin America. Senator HAWKINS has persistently been making these points to her colleagues. This comprehensive legislation is long overdue, and we owe Senator HAWKINS a large debt of gratitude for it being before the Senate today.

Mr. KENNEDY. Mr. President, I would like to call my colleagues' attention to an often overlooked issue related to the drug crisis in the United States, that is the central role of Puerto Rico in both the problem and the solution.

Mr. President, as we should always be aware, Puerto Rico is a Commonwealth of the United States, and its citizens are citizens of the United States. Because of its critical strategic location, the Island of Puerto Rico is a hub for transportation, commerce, and tourism in the Western Hemisphere. Because of its proximity to Latin America, Central America, and the Caribbean, Puerto Rico is a source of much of the drug traffic destined for the United States. A recent New York Times article stated that approximately 80 percent of the drugs coming into Puerto Rico are eventually transshipped to the mainland United States. Thus to attack the drug problem at America's borders and virtually ignore the problem in Puerto Rico, makes little sense.

Mr. McCLURE. Mr. President, there has been substantial intelligence on the use of the Commonwealth of Puerto Rico as a major entry point for illicit drugs from abroad. The proximity of Puerto Rico to the United States mainland as well as the Caribbean and Latin America, and its inclusion within the custom zone of the United States make it a particularly vulnerable point for transshipment. The United States Drug Enforcement Administration estimates that 80 percent of drugs brought into Puerto Rico are bound for the United States mainland.

Both H.R. 5484 and S. 2798 have recognized the need to provide Puerto Rico with resources to give assistance needed to enforce Federal and Commonwealth drug laws. However, the package introduced last Friday by the Senate majority leader does not contain specific allocation of resources to the Commonwealth of Puerto Rico to combat drug abuse.

Mr. KENNEDY. Gov. Rafael Hernandez Colon has taken unprecedented efforts to combat drugs by establishing a program to coordinate drug enforcement efforts with local and Federal agencies and by establishing drug programs for public servants in sensitive government positions. I believe we should commend these efforts and help him solve this very serious situation affecting us all.

Mr. McCLURE. President, I agree with my colleague Senator KENNEDY that the administration of Gov. Rafael Hernandez Colon of the Commonwealth of Puerto Rico has made crime control a high priority and has developed a comprehensive plan of joint efforts with the Federal Government to crack down on drug-related crimes. The assistance provided by the bills before Congress would obviously help Puerto Rico implement this plan. An important resource that would not be provided by this legislation is a radar equipped lighter-than-air vehicle—Aerostat—that the Federal Government should operate over the island to protect the United States border in Puerto Rico. The Aerostat is needed because current radar surveillance does not cover the entire island.

Mr. KENNEDY. In both House and Senate legislation, funding is provided for lighter-than-air Aerostat vehicles to protect the U.S. border. The United States border in Puerto Rico is critical to the success of the Interdiction Program. In voting for this bill today, it is my hope that the Commonwealth of Puerto Rico will have all necessary tools, including the radar Aerostat, to successfully intercept illicit drugs before they are transshipped to the United States mainland.

Mr. McCLURE. Puerto Rico must have the necessary resources to combat drug abuse and drug-related crime. It is my hope in supporting the legislation before us today that such assistance will indeed be provided to the Commonwealth.

Mr. JOHNSTON. Mr. President, I concur with my colleagues' concerns about the situation in Puerto Rico. Obviously we know that the entry of illegal drugs onto the island contributes to the significant crime levels in Puerto Rico. However, I am also concerned about the strategic role Puerto Rico plays in the Western Hemisphere, as an important partner in the

transportation, commerce, and tourism of the Caribbean and all of Latin America. It seems to me that we should use every effort to ensure that the United States border in Puerto Rico is adequately covered by the best available surveillance technology, so that we can intercept drug transit to Puerto Rico before it is passed on to the rest of the United States.

I think the Aerostat system would vastly improve radar surveillance across the whole Island, and can go a long way toward stopping the massive transshipment of drugs through Puerto Rico. Let's not plug up some of the borders of our Nation and open the floodgates at other points. Let's stop the drug traffic where it enters our country, and let's not leave out the significant transit through Puerto Rico.

Mr. DECONCINI. Mr. President, there has been a great deal of discussion about the fight against drugs in Puerto Rico. I am aware that because Puerto Rico serves as a major transportation hub, it is a target for those seeking to flood the mainland United States with illegal drugs.

I am also aware of estimates that suggest that up to 70 percent of the crime in Puerto Rico is drug related. While I recognize that this is a significant internal problem for Puerto Rico, and that because drugs are being moved to the mainland that it is a problem for all of us, I would like to know the best way to combat the problem in Puerto Rico.

As someone who has spent many years studying the technology related to drug interdiction, I am agreeable to examining the feasibility of introducing Aerostat radar capabilities into Puerto Rico as part of the effort to strengten our borders.

FEDERAL DRUG CONTROL EFFORT SHOULD FOCUS MORE RESOURCES ON EDUCATION AND ERADICATION

Mr. NUNN. Mr. President, there is ample evidence of the dimensions of the threat posed by illicit drugs. For example, for 1985 in New York City alone, public health officials reported more than 1,600 drug-related deaths. For the same year, 27 other metropolitan areas reported 7,500 additional lives claimed by drugs. It is estimated that thousands more drug-related deaths go unreported.

The volume of cocaine smuggled into the United States this year is expected to be double that of 1985, according to the Customs Service.

In the State of Georgia, there have been large increases in narcotics usage. From 1981 to 1985, the Georgia Bureau of Investigations reported the following increases in arrests for drug violations: cocaine, 409 percent; hallucinogens, 108 percent; heroin, 106 percent; synthetic narcotics, 155; and drug paraphernalia 564 percent.

Overall, the toll imposed on this country from illicit drugs is large, by any measure—be it in lives lost, careers ruined, crimes committed, resources wasted. One judge has estimated that half the workload of the criminal justice system is drug related. Drug money has given new credence to the saying, "Every man has his price." So much cash is generated by narcotics trafficking that it contributes to public corruption and causes an erosion in people's faith in government.

Illegal narcotics profits are so huge that they have even been found to distort real estate values as drug dealers, anxious to legitimize illicit moneys, pay exorbitant prices for buildings and homes.

The drug problem has deeply troubled the American people for several years. Recent surveys show it to be among their greatest concerns. For his own part, this Senator has taken initiatives which addressed the drug issue by trying to strengthen law enforcement's hand.

In 1981, with support from both sides of the aisle, I introduced legislation reversing a 100-year-old policy preventing any military assistance to civilian law enforcement efforts against drug traffickers. The purpose of the measure was to permit the use of military technology such as radar systems for use in detecting suspicious private aircraft and small ocean vessels. The proposal, which became law in 1981, amended the Posse Comitatus Act of 1876 which had effectively barred such assistance in the fight against the drug smuggler.

In 1982, basing the next proposal on the results of hearings before the Permanent Subcommittee on Investigations, I introduced legislation, which was enacted that same year, that brought another branch of our Government back into the antidrug effort. This bill amended the Tax Reform Act of 1976 which has effectively taken the Internal Revenue Service out of the battle against major narcotics dealers and organized crime figures.

In 1983, legislation was enacted with my cosponsorship which allowed for increased penalties for major narcotics traffickers and the denial of bail to those who were determined to be a danger to their community. These proposals, along with other needed reforms of the Federal criminal laws, were included in the Comprehensive Crime Control Act of 1984.

Those measures were necessary and have assisted drug enforcement efforts. In addition, I have supported proposals to enlarge Federal drug treatment and education programs. Still, the drug problem persists. Why? Part of the answer is that all too often Federal programs have been disjointed, have worked at cross purposes with each other and have suffered from a lack of effective leadership and coordination.

The often conflicting pursuits of Federal drug control efforts were seen recently in hearings on crack cocaine before the Permanent Subcommittee on Investigations. As has happened in the past, it quickly became apparent that it would be difficult to achieve a working consensus on how to solve the drug problem.

Witnesses from the education and treatment side testified that more resources are needed to instruct and counsel people on the dangers of drug abuse and to help addicts break their habits. Spokesmen from law enforcement stepped forward to urge a commitment of more resources to police work.

Equally important, many other knowlegeable experts in this field have argued that we will never stop the drug traffic until we go a step beyond the interdiction stage and eradicate the drug crops under cultivation.

There is something to be said for each approach: eradication; law enforcement and interdiction; and education. Unfortunately, the current approach has been heavily weighted in favor of the middle factor of the three-pronged equation, interdiction and law enforcement, and grossly neglectful of the most promising programs—education and eradication.

The two approaches of education and eradication have been treated like homeless orphans in the past, while billions have been spent on interdiction and the country still has as great a drug problem as it has ever had. Mr. President, there are two sources of our drug problem—the source where drugs are produced and the source where drugs are consumed. Eradication and education offer the Nation its best chance of curtailing both the supply of drugs and the demand for them. I call this stopping drugs at the source. Education strikes at the problem by reducing demand. Eradication strikes at the problem by reducing supply. Interdiction and law enforcement do not strike effectively at supply or demand yet get most of the money. This does not mean we should not improve law enforcement and interdiction. It does not mean we must balance our priorities.

One assumption that needs to be reassessed in drug control efforts is the belief that interdiction should be the first line of defense against drug trafficking. I favor interdiction. I have initiated programs and supported others to strengthen law enforcement in drug control efforts. But compared to interdiction, eradiction is quicker, cheaper and more effective, and should enjoy a much higher position in our list of priorities.

Once the drug is an entity, once the plants are off the farm and on their

way to market, they are very difficult to track. We should try literally to nip them in the bud. As a matter of policy, we should broaden that first line of defense to the task of converging on and destroying the source of the drugs themselves. That is to say, in cooperation with the host country, we should first prevent the drug-producing crops from being planted or, if that fails, eliminate the crops while they are still under cultivation or during or shortly after their harvest.

It is estimated that the interdiction strategy results in seizure of only about 10 percent of the drugs smuggled into the country. Obviously, that is not sufficient to make a substantial dent in the traffic. It seems to me that we have no choice but to commit additional financial and diplomatic resources to going directly to the sources of the drugs and eradicating them before they are shipped from the countries of origin.

Eradication is cost effective. For example, prior to the State Department's eradication effort in Colombia in 1984-85, that Nation supplied 80 to 90 percent of the marijuana shipped into the United States. Eradication, which cost between $5 million and $8 million, wiped out 85 percent of the Colombian drop, according to State Department statistics. We can only imagine the additional millions of dollars our Interdiction Program would have cost to have produced the same results.

The narcotic-growing nations of the world must be made to understand that the United States does not want them to grow dope anymore. The message must be clear—yet tempered by the assurance that, wherever appropriate and practical, we will help them develop new and legitimate crops and assist in other ways as they seek to compensate for the losses in revenues resulting from the drug eradication effort.

This approach is not without difficulties. Some areas where opium poppies, marijuana, and coca leaves are grown or processed are not readily accessible to the host governments. First, terrorists or insurgents may control the region and may possibly be in league with drug traffickers. Second, the host government may not know the whereabouts of the crops in less developed areas of their countries.

Those constraints are real and there is no intention to underestimate them, but they do not apply in every instance. And they are not insurmountable barriers. With imagination, determination, and international cooperation, they can be overcome to a considerable extent.

The Senate bipartisan legislative package on drug abuse speaks to the eradication question in a number of ways, including reasonable and essential increases in the State Department's budget for international narcotics control projects. Moneys appropriated for this mission now total about $60.2 million. The figure which had been proposed by the administration for next year was $65 million. The new bill calls for that amount to be increased to about $120 million. This represents a substantial increase. But it is what I call a slow beginning in a good direction. I believe it should be more when compared to the amount of money—some $600 million—earmarked for enforcement and interdiction and the additional $115 million set aside for assistance to State and local law enforcement agencies for narcotics enforcement.

In addition, this bill mandates the withholding of foreign assistance to every major drug-producing or transit country unless the President certifies to Congress that the particular foreign country has taken adequate steps to eradicate local production or to prevent the transshipment of drugs through its territory. By doing so, this bill will send a clear message to those producing nations, "You either start helping us or we're going to stop helping you."

But even with strong emphasis on eradication, another strategy should be pursued with renewed resources—that of education. Prevention—saying no in the first instance—is the best cure for drug abuse.

The Senate bipartisan drug bill spells out a coordinated strategy to educate the public about drugs. The legislation substantially increases the Federal commitment in the most critical area of drug education efforts.

The bill encourages the development of concrete plans and programs for drug abuse education and offers asssitance to State boards of education and local school districts in the implementation of those plans.

The measure provides increased Federal funds for those States and localities that aggressively pursue education and public awareness programs to eliminate the demand for drugs among their youth.

The bill addresses the critical problem of treatment and rehabilitation for drug offenders. For too long, addict rehabilitation programs have received insufficient support. The bill addresses this issue by providing matching grants to those State and local agencies that treat the victims of drug addiction.

The bill encourages a coordinated education effort with direct input to local schools. It provides for Federal assistance to those private and public agencies operating in our local communities that can have the greatest impact upon young people. This substantial Federal effort in education will help stimulate similar interest and programs at the community level. We can most effectively reach the drug user or potential drug user at the grassroots level.

In total, the bill directs some $150 million for drug education, which is far greater than the $3 million being spent now by the U.S. Department of Education on this task and other sums spent by the Department of Health and Human Services.

Law enforcement and interdiction, absorbs the lion's share of the bill, as some $600 million is authorized for the Drug Enforcement Administration, the Justice Department, the Customs Service, the Coast Guard and the Defense Department.

In addition, the bill enlarges the numbers of drug agents and prosecutors, increases the number of prisons, and provides $115 million in assistance to State and local law enforcement agencies for narcotics enforcement.

The bill strengthens the penalties for major drug traffickers including forfeiture provisions. It creates new criminal offenses for money laundering, designer drugs, and crack cocaine.

In order to pay for many of these programs, the legislation removes the current unrealistic ceilings on the Departments of Justice and Treasury's forfeiture funds which now limit the amount of seized and forfeited assets that can be used for drug enforcement efforts. We allow all moneys remaining in these forfeiture funds at the end of each fiscal year to be used, if necessary, to pay for Federal, State, and local drug control programs.

Overall, then, the legislation supports every aspect of the drug control effort—eradication, interdiction, and law enforcement and education, treatment and rehabilitation. As a member of the Democratic Work Group on Drug Substance Abuse, I have worked with my colleagues on both sides of the aisle on this measure and believe we have taken the first step in moving the Nation forward on the long and trying road toward control of the drug traffic.

The bill is not perfect. It is still heavily weighted on the side of interdiction and law enforcement. Much more remains to be done in eradication and education. Moreover, it is readily apparent to this Senator that, while there are many good and constructive provisions in this bill, the overall law itself was put together much too hastily.

But in summary—this is a major step forward.

CAYMAN-UNITED STATES COOPERATION

Mrs. HAWKINS. Mr. President, our bipartisan drug bill authorizations and specifically earmarks funds to support increased narcotics interdiction operations in the Bahamas. While this step is a major accomplishment, we also must consider our joint efforts with other Caribbean jurisdictions.

Whenever one of our neighbors in the Western Hemisphere joins us in the war against narcotics, there are important double benefits. First, this cooperation—the flow of intelligence and joint interdiction efforts—enables us to accomplish more with the same resources than we could ever hope to accomplish acting independently. And second, our partnership sends a signal to the drug trafficker that no protection is to be found on our partner's soil or seas.

One of the first Caribbean jurisdictions to extend its hand to us in cooperation was the Cayman Islands; today, in many respects, this British Crown Colony of only 17,000 persons is still leading the way.

The Cayman Islands were the first in the Caribbean, Mr. President, to enter into an agreement with us expressly waiving strict financial-privacy laws for documents which our Attorney General could certify relate to a narcotics investigation or processing. This 1984 narcotics agreement has won Justice Department praise for providing vital evidence in a number of major drug cases. Because of its success, other Caribbean nations are now showing a willingness to sign similar agreements as well.

Last July, our partnership with the Cayman Islands produced the first Caribbean treaty to provide for mutual legal assistance on a broad range of criminal matters, including "insider" securities trading, racketeering, and fraud. Cayman Gov. G. Peter Lloyd called the Mutual Legal Assistance Treaty "a sign to the world that the offshore outlaw has no home in the Cayman Islands," adding that the Cayman people "will not permit our confidentiality laws to be used as a shield behind which criminal elements seek to operate with impunity."

Joint United States-Cayman drug interdiction efforts have yielded vital intelligence, arrests and seizures. The DEA Miami Field Division's Caribbean Affairs Coordinator, S.B. Billbrough, has referred to the assistance and advice of the Royal Cayman Police Force as "exemplary," adding that "on numerous instances, major investigations being conducted by DEA could not have been successfully completed without this total cooperation."

Mr. President, our bill providing for assistance to the Bahamas is an example of United States assistance to an international partner in this struggle. Beyond this help, I hope the administration and Congress will look to other opportunities to increase the capabilities of Caribbean jurisdictions to help us interdict drug traffic. Specifically, I hope any requests for assistance from the Cayman Islands will be treated favorably and with dispatch.

Mr. TRIBLE. Mr. President, I strongly support the Senate's antidrug trafficking package. It is a powerful first step in what will be a long and difficult battle against the international drug trade.

This legislation will be the most comprehensive antidrug trafficking bill ever enacted by the Congress, and it attacks the problem of drugs on many fronts. First, it hits the drug trade at its source by withholding U.S. financial support from drug source nations that fail to cooperate. Second, it provides increased resources for interdicting illicit drugs before they reach our shores. Third, it substantially increases the criminal penalties for drug dealers. And finally, it enlarges the Federal Government's role in drug abuse education, rehabilitation, and prevention programs.

I am especially pleased that this comprehensive package contains two bills that I authored to combat the illicit drug trade. The first of those measures provides for life imprisonment of major drug traffickers and raises the fines applicable to such offenses so that they more accurately reflect the huge amounts of cash involved in drug running.

At present, the benefits of drug trafficking far outweigh the risks imposed by society. A single drug transaction can produce millions of dollars in profits. Yet, the likelihood of arrest, conviction, and punishment is slight. For example, U.S. officials estimate that they presently intercept only a small percentage of the illegal drugs entering the United States from abroad. It is time for more vigorous law enforcement and for tougher penalties that will put major drug traffickers out of business forever.

For that reason, I introduced legislation to impose life imprisonment on those convicted of continuing criminal enterprises involving large-scale drug trafficking, and I am pleased that it is part of this bipartisan package. This initiative is focused on the Nation's major drug runners—those who operate large-scale distribution schemes that reap substantial profits. It is these drug kingpins who contribute most to the widespread availability of illegal drugs. And it is they who are most deserving of severe punishment.

The second of my bills adopted as part of this package is aimed at breaking the vital economic link in the international drug chain—the laundering of profits from the production and sale of illicit drugs.

This legislation will prohibit foreign assistance to those nations that refuse to help prevent and punish the laundering of drug-related profits. It also requires that the international narcotics control strategy report identify those nations that are significant centers of drug money laundering, and report on the efforts those nations are making to eliminate laundering activities within their territory.

For several years, Federal law has prohibited foreign assistance to nations that fail to prevent drug cultivation within their territory. This lever has proved tremendously effective, and has helped to prod foreign governments into stepping up their crop eradication efforts. I believe we must adopt the same approach with respect to drug money laundering activities.

The methods by which drug runners conceal their illicit profits and reinvest them in the drug trade are a vital part of the overall drug problem. The Senate recognized this reality when it voted 98 to 0 recently for a bill making willful laundering of profits from criminal enterprises a Federal offense.

Surely, we must attack this problem on an international scale. It is no secret that many countries are havens for drug money laundering. Panama, Colombia, and Mexico are among the world's principal laundering centers. Earlier this year, for example, the State Department testified that Panama is "virtually made to order" for laundering United States currency. The Treasury Department estimates that up to $600 million may be laundered every year through Panama alone.

Mr. President, as long as large amounts of cash abound in the drug trade, our efforts to wipe out crops or stop the distribution of deadly drugs will not succeed. That's why I believe this proposal is an essential part of the Senate's comprehensive drug bill.

Illegal drugs smuggled across our borders are exacting a great price in lives and human suffering. America watches as thousands and thousands of our young people experience the living hell of drug abuse. Yet, today, our response to this onslaught of crystalline death and destruction has been mostly rhetorical.

It's time for strong and decisive action. Our war on drugs cannot succeed—will not succeed—unless we go to the source nations and by quiet diplomacy or otherwise stop the production of deadly and dangerous drugs.

We did this successfully in Turkey in the 1970's and it worked temporarily a few years ago in Mexico.

Some countries—Colombia, Bolivia, Peru, Mexico, and others—are in the drug business. Colombia provides 80 percent of the world's cocaine. Peru and Bolivia grow 95 percent of the coca from which cocaine is made. Mexico provides most of our heroin and marijuana.

These countries are attacking the United States and we must defend ourselves.

If we take strong action overseas, we won't have to worry about stopping drugs at our border or testing workers because the presence of drugs in our society would be sharply curtailed.

Mr. President, I was pleased to help shape the provisions of title II and believe that the adoption of this legislation will substantially strengthen international narcotics control.

The war on drugs will not be won by one Congress or in 1 day or 1 year. Rather it will take a sustained effort and a comprehensive response on the part of all of our citizens. This bill represents an important step in the right direction and I urge my colleagues to give this legislation their enthusiastic support.

Mr. GORE. I am pleased to be cosponsor of this amendment. It embodies several parts of The Homeless Persons' Survival Act of 1986, which I introduced a few months ago. This amendment will not solve all of the problems of the homeless, and my colleagues should know that we must revisit this issue next year. But this amendment does make important steps forward.

It will allow homeless persons otherwise eligible for entitlement benefits and job training to receive them notwithstanding the fact that they don't have an address. It will also allow homeless persons to use food stamps for the purchase of prepared meals at shelters. After all, they do not have kitchens. So these changes really make good common sense. But let me repeat, Mr. President, that we will need to do more—particularly in the area of low-income housing. That is the heart of the problem. And we must act.

Too often, the apathetic cling to the notion that homelessness is merely a local issue, like parking tickets or street crime. If only it were that simple. If only cities could cure homelessness by passing an ordinance or turning to local charities.

The problem is to big for that. The causes of homelessness are extremely complex, and a solution is even more elusive. But one thing is painfully clear: in the long run, the homeless must become a national responsibility. The fate of the homeless is in all our hands, and we must reach out to them as a nation.

Across the country, people are beginning to realize that we can't turn our backs any longer. Homelessness hasn't been this bad since the Great Depression—and it continues to get worse. Requests for emergency shelter increased by 25 percent last year. That doesn't include the hundreds of thousands of homeless too proud or too downtrodden to seek help.

The face of homelessness is changing all the time. Young women, families with children—thousands of Americans who through no fault of their own find themselves with nowhere to go.

Our Government can't turn away from that fact any longer. The American people have a much broader vision of government than our current leaders might think. This administration seems to have forgotten that through the years, we have come so far together by making sure no one gets left behind.

Half a century ago, in the depths of the Great Depression, we made up our minds no one in this country should ever face such suffering again. We began weaving a safety net so that Americans who fell could get back up again. In later years, we set out to become the kind of society where the young would never go hungry and the elderly would not have to grow old alone or in abject poverty.

We made great strides toward that vision. But in recent years, our country has beat a hasty retreat from the war on poverty. Lately, our Government has given in to hunger and malnutrition, and let more than 6 million Americans drop below the poverty line.

We can't let the country slip any further. I think it's time to repair the damage. It's time to look at what's left to the safety net, and fix the gaping holes that have let thousands of Americans slide into oblivion.

As I mentioned, this amendment includes some of the best parts of S. 2608, a bill I introduced along with the Senator from New York [Mr. MOYNIHAN] to put these forgotten citizens back onto the national agenda. It's called the Homeless Persons' Survival Act, and survival is what my bill and this amendment are all about—the survival not only of thousands of needy Americans, but of our reputation as a caring society.

S. 2608 attempts to provide a comprehensive solution to a vast, almost overwhelming problem. It addresses the needs of the homeless today, and sets out to make sure there will be fewer homeless tomorrow.

S. 2608 has three parts: emergency relief, preventive measures, and long-term solutions to homelessness—from low-income housing to mental health care.

The bill takes simple steps to ease the plight of the homeless. It provides grants to improve health care and mental health services for the homeless. It assures that the homeless will receive and be able to use the food stamps to which they are already entitled. The amendment we consider this evening adopts a provision of S. 2608 eliminating the need for an address in obtaining entitlements. This amendment also incorporates a provision of S. 2608 which would permit the use of food stamps for prepared meals at shelters and elsewhere.

Besides addressing these short-term needs, S. 2608 outlines several ways to prevent homelessness in the first place. It sets guidelines against unnecessary eviction from public housing, and authorizes funds to preserve existing SRO's and other low-income housing. The bill also makes the homeless a target group for job training programs.

In the long run, of course, the only way to relieve the plight of the homeless is to relieve the shortage of low-income housing. S. 2608 sets money aside to expand the stock of affordable housing in this country. It calls for an increase in the number of subsidized housing certificates and public housing units, and for the preservation of existing units. It provides for community residence programs to meet the special housing needs of the mentally ill.

All in all, the Homeless Persons' Survival Act offers a good answer to one of the toughest questions of our time. This amendment to the Anti-Drug Abuse Act includes only some of the provisions of S. 2608. I intend to pick up where we leave off once the new Senate convenes in 1987.

We live in an age of limits, and in the face of those limits, we must learn to do more with less. But as any homeless person will tell you, there is only so much you can do with so little.

This homeless initiative doesn't plunge the Government into some expensive new direction. All it asks is that we take another look at safety net programs that have been cut—and that used to work.

No one expects the Federal Government to solve this problem on its own. Private individuals and charities have always been the homeless person's best friend, and will continue to lead the fight. In my home State of Tennessee, I am sponsoring a series of workshops for people to discuss what each of us can do to help the homeless. The response to these workshops has already been remarkable.

But in the end, we must reach out to help the homeless together, as a Nation. I believe the American people are ready for a new challenge and a new era. It's time to start building a society that can do more than just say no. It's time for America to give its people the tools to survive, and to bring back into the fold those whom our society has left out. We must set out once again to replace obstacles with opportunities.

We care too much about the homeless to ignore them any longer. I urge the adoption of this amendment.

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

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

SENATE RESOLUTION HELD AT THE DESK

Mr. INOUYE. Mr. President, I ask unanimous consent that Senate resolution 495 be held at the desk. This matter has been cleared on both sides.

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

ANTIDRUG ABUSE ACT OF 1986

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I am advised by the managers that there could be one additional amendment.

Mr. HATCH. Senator METZENBAUM is waiting for one to come.

Mr. DOLE. In any event, we need to get a unanimous-consent agreement to get final passage and to figure out a funding amendment, one from the distinguished Senators DOMENICI and CHILES and the other from Senators HATFIELD and STENNIS, and that no other amendments be in order. I hope we can reach that agreement.

I do not anticipate any more record votes. I have consulted with the managers on each side.

Unless Senators want to stay here for the agreement, they can probably go home.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 0200

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

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

Mr. CHILES. I ask unaniamous consent that the Chiles amendment No. 3081 be modified to include the text of Senator BENTSEN's amendment No. 3039, adopted earlier today.

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

Mr. CHILES. 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.

□ 0210

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

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

S. 1026, THE CONTINENTAL SCIENTIFIC DRILLING AND EXPLORATION PROGRAM

Mr. PRESSLER. Mr. President, on behalf of myself and the 415 cosponsors of S. 1026, the Continential Scientific Drilling and Exploration Program, I urge my Senate colleagues to approve this important legislation. The Continental Scientific Drilling Program [CSDP] is an important national scientific endeavor that is vital to the understanding of the geologic evolution of the Earth and the economic value of its structure. This is an issue which I believe parallels in importance our efforts in the Space Program.

The CSDP is designed to resolve basic questions concerning the dynamics, structures, properties, and evolution of the Earth's crust that require samples and measurements from drill holes. By increasing the basic understanding of the Earth, an effective program has practical daily applications in areas dealing with oil, gas, coal, and geothermal energy sources. The Drilling Program will also aid in the development of better technologies related to mineral resource development, water resource management, and a better understanding of natural hazards such as earthquakes, volcanic eruptions, and the disposal of hazardous wastes.

Mr. President, I believe a brief legislative history will provide my colleagues with a better understanding of the provisions of this bill and how we arrived at this juncture.

In the fall of 1984, I introduced a resolution setting forth the policy goals of CSDP and putting the Congress on record in support of its implementation. The resolution was accepted as an amendment to the fiscal year 1985 continuing resolution and signed into law on October 12, 1984. The following April I introduced the bill currently before us, S. 1026. As of today, we have 14 cosponsors from both sides of the aisle, including Senators DURENBERGER, MATSUNAGA, MOYNIHAN, HEINZ, DOMENICI, NICKLES, STEVENS, BENTSEN, WARNER, MURKOWSKI, DIXON, SIMON, ABDNOR, GRAMM, and BINGAMAN.

In July, the Subcommittee on Natural Resources Development and Production held hearings on this important bill. Under the able guidance of the subcommittee chairman, Senator WARNER, the hearing examined many of the technical aspects of implementing the program and provided an opportunity to gauge the depth and breadth of support for CSDP. I would like to thank Senator WARNER and his staff for all their assistance in holding the hearing and in guiding this bill through the committee. I participated in that hearing, which I believe provides an excellent basis for, and justification of, this legislation.

Mr. President, let me highlight just briefly what the bill does. In setting forth the "purposes" and "findings," it highlights some of the most fundamental benefits to be derived from the program. Section 4 contains the operative language. In essence, it encourages the continuation of the cooperative effort that has been going on for many years between the Departments of the Interior and Energy and the National Science Foundation. The Interagency Coordinating Group referred to in the legislation has been in existence for roughly 3 years. Perhaps most importantly, section 4 directs the Interagency Coordinating Group to prepare and submit to Congress a plan of action for the implementation of CSDP. In essence, we are asking them to tell us how long it would take, how much it costs, and what specific benefits we can expect to gain from a Continental Scientific Drilling Program.

Mr. President, the United States has a lot of catching up to do in the deep drilling area. The Soviet Union and many of our European counterparts are far ahead of us in developing this important scientific technology.

This bill is brief. Its language is self-explanatory. It would require no additional funding. I want to emphasize that point to allay any budgetary concerns on the part of my colleagues. The administration has been very supportive of the effort. Finally, I know of no opposition to this bill. This is a very important measure which I urge my colleagues to support.

I would ask unanimous consent that the text of S. 1026 be printed at this point in the RECORD.

THE PRESIDENT'S VETO OF H.R. 4868, THE COMPREHENSIVE ANTI-APARTHEID ACT OF 1986, SHOULD BE OVERRIDDEN

Mr. DIXON. Mr. President, as my colleagues know, the President yesterday vetoed H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986. In my view, the President has made a terrible mistake, one that I hope the Senate and House of Representatives will promptly correct by overriding the veto.

I want to remind my colleagues that the package of sanctions the President so unwisely vetoed passed this body just last month by an overwhelming vote of 84 to 14, and passed the House by an equally impressive 308 to 77 vote. The margins in both the Senate and the House were far in excess of the two-thirds required to overturn a veto.

I have read the President's lengthy veto message, but I cannot agree with its analysis nor its conclusions. The President continues to cling to the bankrupt and discredited "constructive engagement" policy, even though he no longer uses that term. He refuses to see that United States failure to act on the sanctions issue creates the appearance of American Support for a South African Government, and the repugnant system of institutional-

ized racism, known as apartheid, that it practices.

It is not enough for the United States, as the leader of the free world, to express rhetorical abhorrence of apartheid. We must act.

That is why I supported South African sanctions legislation. That is why, when the bill was before the Senate, I voted for every amendment to strengthen the sanctions, so that we could put the maximum pressure on the South African minority government.

If the United States does not stand with the South African black majority, then it stands with a totally discredited South African Government that uses its police, its army, and every other mechanism of state power to grind its black and other minority citizens or into the dirt.

We are a country that was founded on the principles of democratic government. We fought a war to achieve self-rule. In this year of the centennial of the Statue of Liberty, it is well to remember that we did not fight the fight alone. We had help from the French.

Black South Africans are not asking us to fight with them as we did the French. They only ask that we conduct our trade in a way that does not help support apartheid. That, it seems to me, is the least that we can do.

Reverend Tutu and other black South African leadership support sanctions. The black front-line states that could be severely hurt by South African retaliation support sanctions. Importantly, the American people also support sanctions.

They know what the administration seems not to know: that enactment of this legislation is not only a moral and ethical necessity, but that it is also in our long-term foreign policy interests.

I therefore pledge to my constituents and to the Senate that I will do everything I can to see that the President's veto is overridden just as quickly as is possible. The legislative package the President vetoed was the product of a strong, bipartisan congressional consensus. I fervently hope that the same strong, bipartisan consensus will override that veto. It is the right choice. Indeed, it is the only choice.

MEASURES PLACED ON THE CALENDAR

The Committee on Commerce, Science, and Transportation was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 4212. An act to provide for the reauthorization of the Deep Seabed Hard Mineral Resources Act, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Veterans Affairs, without amendment:

S. 2885: An original bill to amend title 38, United States Code, to provide for certain Veterans' Administration benefits, which are paid based on the service-connected disability or death of a veteran, to be paid in accordance with laws administered by the Veterans' Administration and to provide for certain Veterans' Administration insurance policy loans to be made and revolving funds to be administered in accordance with such laws, and to provide for Veterans' Administration home loan guaranty reports under certain circumstances, and for other purposes (Rept. No. 99-494).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 230: A bill for the relief of the city of Dickinson, North Dakota (Rept. No. 99-495).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with amendments:

H.R. 5028: A bill entitled: "The Lower Colorado Water Supply Bill" (Rept. No. 99-496).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

H.R. 5465: A bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances (Rept. No. 99-497).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. 2483: A bill to amend the Fire Island National Seashore Act of 1964 (Rept. No. 99-498).

H.R. 2182: A bill to authorize the inclusion of certain additional lands within the Apostle Islands National Lakeshore (Rept. No. 99-499).

By Mr. THURMOND, from the Committee on the Judiciary with an amendment in the nature of a substitute:

S. 2575: A bill to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

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. PACKWOOD (for Mr. METZENBAUM (for himself, Mr. NICKLES, Mr. HATCH, Mr. QUAYLE, Mrs. HAWKINS, Mr. WEICKER, Mr. THURMOND, Mr. GRASSLEY, Mr. DOLE, Mr. NUNN, Mr. HEINZ, Mr. MATTINGLY, Mrs. KASSEBAUM and Mr. GORTON)):

S. 2884. A bill to amend the Fair Labor Standards Act of 1938, to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor; considered and passed.

By Mr. MURKOWSKI, from the Committee on Veterans' Affairs:

S. 2885. An original bill to amend title 38, United States Code, to provide for certain Veterans' Administration benefits, which are paid based on the service-connected disability or death of a veteran, to be paid in accordance with laws administered by the Veterans' Administration and to provide for certain Veterans' Administration insurance policy loans to be made and revolving funds to be administered in accordance with such laws, and to provide for Veterans' Administration home loan guaranty reports under certain circumstances, and for other purposes, placed on the calendar.

By Mr. NICKLES (for himself and Mr. BOREN):

S. 2886. A bill to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products; to the Committee on Finance.

By Mr. ROTH (for himself, Mr. CHILES, Mr. DURENBERGER, Mr. LEVIN and Mr. RUDMAN):

S. 2887. A bill to amend chapter 35 of title 44, United States Code, relating to the coordination of Federal information policy, and for other purposes; to the Committee on Governmental Affairs.

By Mr. SIMPSON (for Mr. THURMOND):

S. 2888. A bill to temporarily delay the repeal of the United States Trustee System; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. INOUYE:

S. Res. 495. Resolution to honor Princess Pauahi Bishop; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES (for himself and Mr. BOREN):

S. 2886. A bill to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products; to the Committee on Finance.

OIL IMPORT FEE

Mr. NICKLES. Mr. President, today Senator BOREN and I are introducing legislation for an oil import fee, which would place a fee on imported crude oil equal to the difference in international prices for crude oil and $20. It would impose an additional fee on imported products equal to the oil fee plus $3.

Mr. President, our country cannot stand idly by and allow foreign governments to manipulate the marketplace to devastate our domestic oil and gas industry. The consequences of doing nothing can also be devastating to our national security interests. We do not have and have not had a free market in world energy prices for some time. OPEC member countries conspired to reduce production and drive up prices in the seventies, and this year we have witnessed again manipulation of production to move prices downward.

One year ago world oil prices were in the $28 to $30 range, and today we are looking at oil prices between $13 and

$15. A few weeks ago imported oil was coming into the United States for as low as $9. Again this is not free market forces at work but due to actions taken by a few governments, not private companies. For example, Saudi Arabia increased production from 2.2 million barrels per day to over 6 million barrels per day. The small rebound in prices was due to a tentative agreement with OPEC members to reduce production from 20 million barrels per day to 16½ million barrels per day. While the Saudis and other OPEC countries are working to manipulate markets to their advantage, I think it would be only prudent for us as a government to take some action to see that their manipulations do not cause a severe economic and national security disaster.

The bill I am introducing today would place a floor of $20 for crude oil produced in the United States. The U.S. Government would tax the difference between $20 and the price of imported oil coming into the country. Some would say this is protectionist and in violation of free market principles, but I would respond and say we do not have a free market when you have governments manipulating wild variations in production schedules, which totally distort market prices. The fee is equitable since windfall profit taxes are applied only to domestic production and not imports. Domestic producers since 1980 have paid a total of $77 billion in windfall profits tax. Imports have paid zero. The windfall profit tax raised an average of $5 per barrel over the last several years. If the prices of oil coming into the United States is $14, the amount of imported fee would be $20 minus $14 or $6 on imported crude or $9 on imported products. We are presently importing over 2 billion barrels per year. If the fee averages $5 it would gross the Government over $10 billion per year, which would and should be used for reducing the deficit.

Mr. President, the effect of this fee on imported oil will be positive in at least two respects.

First, it will help stabilize the domestic oil and gas industry, which is presently struggling to stay alive. The number of active rigs has fallen to a historical low dating back to the 1940's. Presently there are 730 active rigs in the country compared to a high of 4,500 rigs in 1981. In Oklahoma we have only 104 active rigs running compared to a high of 880 in 1981. The number of energy loans and banks which have failed have been increasing at an alarming rate and the economic consequences have been felt throughout the Nation.

Second, this tax will help reduce our dependence on foreign sources. Our country is becoming dangerously dependent on foreign sources of oil. Last week we imported 6.85 million barrels per day which equals 42 percent of our consumption. A year ago we were only importing 27 percent. We should not forget the lesson we learned when we became dependent on the OPEC nations and in 1973 were importing 35 percent of our oil needs. In 1979 we imported 45 percent of our oil needs and in both years we suffered because OPEC countries withheld shipments to the United States. Our domestic production has fallen from 8.9 to 8.6 million barrels per day and regretfully will decline further in the future. Imposition of this fee would at least help slow down the reduction in domestic production in the United States.

Mr. President, this bill does not contain exemptions for other countries. It does not have or provide an exemption for crude oil used as a primary feed stock. My expectation is that if the Saudis and other exporting countries would see that the United States and other importing nations would establish such a fee they would reassess their position of wild manipulation of world oil prices.

I hope my friends and colleagues in the Senate as well as the American people will wake up and realize that action should be taken now to avoid our overdependence on unreliable sources, which have the potential for wrecking extreme hardships and high prices on our country in the future.

ADDITIONAL COSPONSORS

S. 1773

At the request of Mr. LEAHY, the name of the Senator from Missouri [Mr. EAGLETON] was added as a cosponsor of S. 1773, a bill to express the policy of the Congress on the number of members of the Soviet mission at the United Nations Headquarters.

S. 2281

At the request of Mr. TRIBLE, the name of the Senator from South Carolina, [Mr. THURMOND] was added as a cosponsor of S. 2281, a bill to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes.

S. 2800

At the request of Mr. DODD, the names of the Senator from Georgia [Mr. NUNN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Massachusetts [Mr. KERRY], the Senator from Tennessee [Mr. SASSER], the Senator from Montana [Mr. BAUCUS], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Texas [Mr. BENTSEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Arkansas [Mr. BUMPERS], the Senator from North Dakota [Mr. BURDICK], the Senator from Illinois [Mr. DIXON], the Senator from Missouri [Mr. EAGLETON], the Senator from Nebraska [Mr. EXON], the Senator from Kentucky [Mr. FORD], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Ohio [Mr. GLENN], the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Colorado [Mr. HART], the Senator from Alabama [Mr. HEFLIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUYE], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Michigan [Mr. LEVIN], the Senator from Louisiana [Mr. LONG], the Senator from Montana [Mr. MELCHER], the Senator from Ohio [Mr. METZENBAUM], the Senator from Rhode Island [Mr. PELL], the Senator from Wisconsin [Mr. PROXMIRE], the Senator from Arkansas [Mr. PRYOR], the Senator from Michigan [Mr. RIEGLE], the Senator from Maryland [Mr. SARBANES], the Senator from Illinois [Mr. SIMON], the Senator from Mississippi [Mr. STENNIS], and the Senator from Nebraska [Mr. ZORINSKY] were added as cosponsors to S. 2800, a bill to require the Secretary of Health and Human Services to make grants to public and nonprofit private entities for drug abuse and alcohol abuse prevention, treatment, and rehabilitation model projects for high risk youth.

SENATE JOINT RESOLUTION 112

At the request of Mr. PELL, the name of the Senator from Nevada [Mr. LAXALT] was added as a cosponsor of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE RESOLUTION 495—HONORING PRINCESS BERNICE PAUAHI BISHOP

Mr INOUYE submitted the following resolution; which was ordered held at the desk:

S. RES. 495

Whereas Princess Bernice Pauahi Paki was born December 19, 1831, to High Chiefess Laura Konia, the granddaughter of Kamahameha I, and her husband, High Chief Abner Kuho'oheihei Paki of the Kiwala'o and Kamehameha Nui lineages;

Whereas Princess Pauahi was the great-granddaughter and last direct descendent of King Kamehameha I, who united the Hawaiian Islands under one ruler;

Whereas Bernice Pauahi married Charles Reed Bishop, a New York native whose immense success as a businessman and governmental advisor in Hawaii, attest to the trust and esteem in which both native and foreign communities held him;

Whereas Princess Pauahi Bishop declined the request of King Kamehameha V to assume the Crown of the Hawaiian Kingdom following his death, that she might

better serve her people while living among them;

Whereas Mrs. Bishop was regarded as the noblest example of womanhood and served as the salutary bridge between her Hawaiian people and the Westerners in Hawaii, and whose home was the center of unpretentious, yet elegant, hospitality to her people and foreigners alike;

Whereas Mrs. Bishop, before her death, was moved by the alarming decline in number and condition of her people, and was determined to find ways that she could best help succeeding generations of the Hawaiian children that she would never know;

Whereas Mrs. Bishop saw that a good education was the key to the future success of her people, and therefore willed her entire estate to the founding and maintaining of the Kamehameha Schools;

Whereas it is by her explicit instructions that all assets inherent in or accruing from her estate be used to the utmost advantage of her beneficiaries for so long as resources permit;

Whereas Mrs. Bishop's selfless giving of her ancestral lands and properties to the benefit of her people has provided unequaled learning opportunities to thousands of Hawaiian children for more than 100 years;

Whereas the Kamehameha Schools/Bernice Pauahi Bishop Estate accepted its first students in 1887, and has since educated more than 12,000 graduates, who have established themselves in careers and occupations in communities around the world, bringing honor and pride to the Schools/Estate and Hawaii;

Whereas on the 150th aniversary of her birth, Mrs. Bishop was honored by the Governor of the State of Hawaii with a proclamation that December, 1981, was to be Bernice Pauahi Bishop Month in Hawaii; and

Whereas it is appropriate and fitting that on the centennial anniversary of Kamehameha Schools/Bishop Estate Bernice Pauahi Bishop be acknowledged by all to be one of the greatest humanitarians in Hawaiian history: Now, therefore, be it

Resolved, That the United States Senate does hereby recognize Bernice Pauahi Bishop as one the great humanitarians in United States History.

● Mr. INOUYE. Mr. President, I am today submitting a Senate resolution honoring Princess Bernice Pauahi Bishop, a member of the Hawaiian royal family and founder of the Kamehameha Schools.

She was a beloved Hawaiian princess—the last direct descendant of the royal lineage of the Kamehamehas. She was the great-granddaughter of Kamehameha the Great, the warrior king who brought the Hawaiian Islands under one rule and ushered in an era of swift and sure justice and one of lasting peace. Yet, to this gentlewoman would be accorded the tribute of "the last and best of the Kamehamehas."

On the last day of October 1883, a year before she died, Princess Bernice Pauahi Bishop affixed her seal to her will. The bulk of her estate which consisted of approximately a half million acres of ancestral crown lands was to be applied to the endowment and maintenance of what were to be known as the Kamehameha Schools. The major beneficiaries of her estate were to be the children of Hawaiian ancestry.

In order to appreciate her dream—her vision as manifested in her will—one must understand the turmoil and troubles of her day. During her lifetime, she witnessed the decimation of her native Hawaiian population of 400,000 to fewer than 45,000. She witnessed the displacement of her people by the rapid expansion and acceptance of western legal, political and economic systems completely foreign to the Hawaiians.

She saw a foreign concept of land ownership abruptly and tragically alienate her people from their ancestral homelands. Never was so much change demanded of a people in such a short span of time. All this she witnessed and against this physical and social deterioration of her people she staked her legacy of education.

On November 4, 1887, 3 years after the death of the princess, the Kamehameha School for Boys was dedicated with a student enrollment of 37 boys and five teachers. Ninety-nine years later, having graduated more than 12,000 Hawaiian children, Kamehameha Schools for Boys and Girls have an enrollment of 2,773 with 183 faculty members.

Today, there are 31 educational programs at Kamehameha Schools, ranging from providing education to boarding students, financial assistance to students, to providing cultural programs and lecture series to the community-at-large. These programs also include all classes from kindergarten to 12th grade.

Initially providing vocational education, Kamehameha Schools have evolved into a college preparatory institution of academic excellence. Of the graduating class of 1986, a class of 359 graduates, 323 have made arrangements to enroll in colleges and universities. I might note that among her distinguished alumni is the first elected congressman of native Hawaiian ancestry, the Honorable DANIEL K. AKAKA.

As we approach the centennial celebration of the founding of the Kamehameha Schools for Boys and Girls, we would be remiss if we did not give tribute to both its founders. For, together with the trusteeship established by the Princess' will, her husband, Charles Reed Bishop, joined his personal fortune and endeavors to make his wife's dream for her people a reality.

Princess Pauahi was never to see her dream realized in her lifetime. However, one can speculate that the reality of the Kamehameha Schools as they exist today would fill her with immense pride in the academic achievements of her students; in the remarkable leadership her graduates have displayed in the Hawaii community and abroad; in the renaissance of a proud Hawaiian heritage that her students have generated and supported; and in the noble principles and discipline that her students carry with them as exemplified by the princess.

On his deathbed, Kamehameha V asked Bernice Pauahi Paki Bishop to become his successor to the throne of the Hawaiian Kingdom. Of her refusal, it has been written:

"Refusing a crown, she lived that which she was—crowned. Refusing to rule her people, she did what was better, she served them and in no way so grandly as by her example."

Princess Pauahi served the native people of Hawaii as their monarch in all but formal title. In recognition of her noble achievements on behalf of the Hawaiian people, I offer the Senate for its consideration this resolution honoring Princess Bernice Pauahi Paki Bishop.●

AMENDMENTS SUBMITTED

ANTI-DRUG ABUSE ACT OF 1986

BENTSEN AMENDMENT NO. 3039

Mr. BENTSEN proposed an amendment to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes; as follows:

SECTION 1. At the appropriate place in the bill, insert the following language:

In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation	$4,000,000
Secret Service	5,000,000

SECTION 2. Amend Title II, Subtitle J (Authorization of Appropriations for Drug Law Enforcement) Sec. 1451(a), by adding after the words "All Source Intelligence Center;" in line seven, the following language: "*Further provided*, That of the funds authorized to be appropriated under this section, $7,000,000 shall be for the procurement of secure voice radios for the Drug Enforcement Administration."

ABDNOR (AND DECONCINI) AMENDMENT NO. 3040

Mr. ABDNOR (for himself and Mr. DECONCINI) proposed an amendment to the bill H.R. 5484:

At the appropriate place in the bill insert the following:

(a) RECRUITMENT AND TRAINING OF VOLUNTEERS FOR THE U.S. CUSTOMS SERVICE.—The Commissioner of Customs, acting under the direction of the Secretary of the Treasury (hereinafter referred to as "the Commissioner") is authorized to recruit, train, and accept without regard to the civil service classification law, rules, or regulations the services of individuals without compensation as volunteers to aid the U.S. Customs Service in the performance of its responsibilities. In accepting such services of individuals or volunteers, the Commissioner shall not permit the use of volunteers in policymaking processes, or to displace any employee. The Commissioner shall not permit the use of volunteers in hazardous duty or law enforcement work unless the Commissioner determines that they are skilled in performing such hazardous activities or are trained in law enforcement work.

(b) ESTABLISHMENT OF U.S. CUSTOMS RESERVE.—The U.S. Customs Reserve (hereinafter "Reserve") is an organization of volunteers administered by the Commissioner of Customs under the direction of the Secretary.

(c) PURPOSE.—The purpose of the Reserve is to assist the U.S. Customs Service:

(a) to foster a wider knowledge of, and better compliance with, the laws, rules, and regulations enforced or administered by the U.S. Customs Service; and

(b) to facilitate the operations of the U.S. Customs Service

(d) ELIGIBILITY, ENROLLMENTS AND DISENROLLMENT.—The Reserve shall be composed of citizens of the United States and its territories and possessions, who by reason of their interests, special training or experience are deemed by the Commissioner to be qualified for duty in the Reserve and who may be enrolled therein pursuant to applicable regulations. Members of the Reserve may be disenrolled pursuant to applicable regulations.

(e) MEMBERSHIP IN OTHER ORGANIZATIONS.—Membership in the Reserve shall not be a bar to membership in or employment in any civilian or military organization of the U.S. Government.

(f) USE OF VOLUNTEERS FACILITIES.—The Customs Service may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any property placed at its disposition for any of such purposes by any individual, corporation, partnership, or association, or by any State or political subdivision thereof.

(g) VESSEL, VEHICLE, OR AIRCRAFT DEEMED PUBLIC VESSEL OR PUBLIC AIRCRAFT.—Any vessel, vehicle or aircraft while assigned to authorized Customs Service duty shall be deemed to be a public vessel, public vehicle or public aircraft of the United States, and shall be deemed to be a vessel, vehicle or aircraft of the Customs Service, but shall not be counted against any limits expressed in authorization acts.

(h) AVAILABILITY OF APPROPRIATIONS.—Appropriations of the Customs Service shall be available for the payment of incidental expenses, such as uniforms and necessary traveling expense and subsistence, or per diem in lieu of subsistence, of volunteers and members of the Reserve assigned to authorized specific duties and for actual necessary expenses of operation of any vessel, vehicle, aircraft, or radio station or other special equipment when assigned to Customs Service duty, but shall not be available for the payment of compensation for personal services, incident to such operation. The term "actual necessary expenses of operation," as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair, or radio station where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, or such vessel, aircraft, or radio station rests with the Customs Service.

(i) ASSIGNMENT AND PERFORMANCE OF DUTIES.—No volunteer or member of the Reserve solely by reason of such volunteer status or membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Customs Service except that any such member may, under applicable regulations, be assigned specific duties, which after appropriate training and examination, he has been found competent to perform, to effectuate the missions of the Customs Service. No volunteer or member of the Reserve shall be placed in charge of a vessel, vehicle, aircraft, or radio station assigned to Customs duty unless he has been specifically designated by authority of the Commissioner or his designee to perform such duty. Volunteers and Members of the Reserve, when assigned to specific duties as herein authorized shall, unless otherwise limited by the Commissioner, be vested with the same power and authority, in the execution of such duties, as members of the regular Customs Service assigned to similar duty. When any volunteer or member of the Reserve is assigned to such duty he may, pursuant to regulations issued by the Secretary, be paid actual necessary traveling expenses, including a per diem allowance in conformity with standardized Government travel regulations in lieu of subsistence, while traveling and while on duty away from his home. No per diem shall be paid for any period during which quarters and subsistence in kind are furnished by the Government.

(j) FEDERAL EMPLOYEE STATUS FOR VOLUNTEERS.—

(1) Employment status of volunteers. Except as otherwise provided in this section, a volunteer or member of the Reserve shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) Tort claims and litigation. For the purpose of the tort claim provisions of title 28 of the United States Code, and litigation against individuals when performing official business, a volunteer under this Act and a member of the Reserve on duty shall be considered a Federal employee and entitled to official representation by the Department of Justice.

(3) Civil employees. For the purposes of subchapter I of chapter 81 of title 5 of the United States Code relating to compensation to Federal employees for work injuries, volunteers and members of the Reserve when performing authorized activities under this Act shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply. When any volunteer or member of the Reserve is physically injured or dies as a result of physical injury incurred while performing any specific duty to which he has been assigned by competent Customs authority, such member or his beneficiary shall be The performance of a specific duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a volunteer or member of the Reserve.

(4) A volunteer shall be considered an employee of the Customs Service for purposes of—

(A) section 552a of title 5 (relating to disclosure of information);

(B) section 1905 of title 18 (relating to confidential business and trade secrets);

(C) any other laws governing access to records;

except that such information shall be made available to volunteers only to the extent that the Commissioner determines that the duties assigned to such volunteers so require.

HAWKINS AMENDMENT NO. 3041

Mrs. HAWKINS proposed an amendment to the bill (H.R. 5484), supra; as follows:

Section 1102 is amended by amending the proposed Section 405B of the Controlled Substances Act by adding at the end thereof the following subsection:

"(f) except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

WEICKER (AND OTHERS) AMENDMENT NO. 3042

Mr. WEICKER (for himself, Mr. HATCH, and Mrs. HAWKINS) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of subtitle A of title IV, add the following:

SEC. 4017. PRIORITY RESEARCH.

The Alcohol, Drug Abuse, and Mental Health Administration shall include as a top priority research on neuronal receptors.

KENNEDY (AND BIDEN) AMENDMENT NO. 3043

Mr. BIDEN (for Mr. KENNEDY (for himself and Mr. BIDEN)) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Section 1552(a)(3) of the bill is amended by amending proposed section 1302 of part M of title I of the Omnibus Crime Control and Safety Streets Act of 1968 by—

(1) striking "and" at the end of clause (5);

(2) striking the period at the end of clause (6) and inserting ", and"; and

(3) adding at the end thereof the following:

"(7) provide grants for programs which identify and meet the needs of drug-dependent offenders for treatment as provided in section 403(a)(8).".

DECONCINI (AND OTHERS) AMENDMENT NO. 3044

Mr. DECONCINI (for himself, Mr. DIXON, Mr. D'AMATO, Mrs. HAWKINS, Mr. MATTINGLY, Mr. WILSON, and Mr. LEVIN) proposed an amendment which

was subsequently modified, to the bill (H.R. 5484), supra; as follows:

At the end of title III, insert the following new section:

SEC. 3602. ADDITIONAL DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall prepare and submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives—

(A) a detailed list of all forms of assistance that shall be made available to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, and

(B) a detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities, as authorized by law.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Committees referred to in subsection (a) receive the list and plan submitted under such subsection, the Committees shall submit their approval or disapproval of such list and plan to the Secretary. The Secretary of Defense shall then immediately convene a conference of the heads of the Federal Government agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or and other assistance made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such matters.

(c) APPLICATION TO OTHER DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE IN THIS ACT.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(d) REVIEW OF DEPARTMENT OF DEFENSE COMPLIANCE BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b) and, not later than 90 days after the date on which the conference is convened under subsection (b), transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

DURENBERGER (AND TRIBLE) AMENDMENT NO. 3045

Mr. DURENBERGER (for himself and Mr. TRIBLE) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of the amendment, add the following:

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"Subchapter VI—Drug Abuse, Alcohol Abuse, and Alcoholism

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATION PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalites provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG ABUSE AND ALCOHOL ABUSE.

(a) IN GENERAL.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. —. SUBSTANCE ABUSE COVERAGE STUDY.

(a) STUDY.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug and alcohol abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug and alcohol abusers.

(b) REPORT.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. —. HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) FINDINGS.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) all employers providing health insurance policies should insure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs per individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

HARKIN (AND OTHERS) AMENDMENT NO. 3046

Mr. HARKIN (for himself, Mr. DOLE, Mrs. HAWKINS, Mr. BIDEN, Mr. BINGAMAN, Mr. NUNN, Mr. DIXON, Mr. CHILES, and Mr. DECONCINI) proposed an amendment to the bill (H.R. 5484), supra; as follows:

AMENDMENT No. 3046

At the end of subtitle A of title III, insert the following:

SEC. —. CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress (1) that the Civil Air Patrol, the all volunteer auxiliary of the Air Force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and (2) that the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—From within any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986, carrying forward into fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, in addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) REPORTS.—(1) The Secretary of the Air Force shall make quarterly reports to the Committees on Appropriations and on Armed Services of the Senate and House of Representatives on the use of such unobligated funds made available pursuant to the authorization contained in subsection (b).

(2) Each report under paragraph (91) shall include a detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(3) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of enactment of this Act.

ANDREWS AMENDMENT NOS. 3047 AND 3048

Mr. ANDREWS proposed two amendments to the bill (H.R. 5484), supra; as follows:

AMENDMENT No. 3047

Amend section 4107(b)(1)(A) as follows: insert after the words, "including parent groups," the following: "and community action agencies,"

AMENDMENT No. 3048

Amend section 4218 as follows:

Strike subsection (b) and insert in lieu thereof the following:

"(b) The powers and authorities conferred herein shall be exercised in accordance with an agreement entered into between the Secretary and the Attorney General of the United States."

MOYNIHAN (AND OTHERS) AMENDMENT NO. 3049

Mr. MOYNIHAN (for himself, Mr. HUMPHREY, and Mr. DOLE,) proposed an amendment to the bill (H.R. 5484), supra; as follows:

AMENDMENT No. 3049

At the appropriate place in the bill, insert the following new section:

SEC. . (a) FINDINGS.—The Senate finds that—

(1) On August 30, 1986, Nicholas Daniloff was arrested, apparently in response to the arrest of the Soviet spy Gennadi F. Zakharov;

(2) On September 5, 1986, President Reagan sent a message to Soviet General Secretary Gorbachev offering the President's personal assurances that Mr. Daniloff was not a spy;

(3) Despite the President's assurances, the Soviet Union indicted Mr. Daniloff on September 7, 1986;

(4) The Soviet Union demonstrated an unprecedented disregard for the word of a United States President, while continuing to

blatantly distort and conceal the facts surrounding the detention of Mr. Daniloff;

(5) Such mendacity jeopardizes the furtherance of any constructive relationship between the United States and the Soviet Union; and

(6) Hundreds of Soviet espionage agents operate at the United Nations, under cover of the Soviet mission to the United Nations and as members of the Secretariat of the United Nations.

(B) The Senate hereby—

(1) Declares that the Soviet Union action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to their responsibilities and commitments under any international or bilateral agreement.

(2) Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff.

(3) Calls on the President to condition his agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

(5) Calls on the President to demand that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of Articles 100, Section 2, of the United Nations Charter.

MURKOWSKI AMENDMENT NO. 3050

Mr. MURKOWSKI (for himself and Mr. PELL) proposed an amendment to the bill (H.R. 5484), supra; as follows:

In title II, section 08, strike out in paragraph (3) "paragraph" and inserting in lieu thereof "paragraphs".

In title II, at the end of section 08, strike out the quotation marks and the second period.

In title II, at the end of section 08, add the following new paragraph:

"(4) With the agreement of a foreign country, paragraph (1) shall not apply to maritime law enforcement operations in the territorial sea of such country.".

METZENBAUM AMENDMENT NO. 3051

Mr. METZENBAUM proposed an amendment to the bill (H.R. 5484), supra; as follows:

In section 4002(a)(1), strike out "$675,000,000" and insert in lieu thereof "$736,000,000".

In section 4002(a)(2), strike out "$136,000,000" and insert in lieu thereof "$186,000,000".

DOMENICI (AND OTHERS) AMENDMENT NO. 3052

Mr. DOMENICI (for himself, Mrs. HAWKINS, Mr. SPECTER, Mr. WILSON, Mr. MURKOWSKI, Mr. BINGAMAN, and Mr. TRIBLE) proposed an amendment to the bill (H.R. 5484); as follows:

At the appropriate place, insert the following:

TITLE —PRESIDENT'S MEDIA COMMISSION ON DRUG ABUSE

SEC. —. SHORT TITLE.

This title may be cited as the "President's Media Commisison on Drug Abuse title".

SEC. —. ESTABLISHMENT.

There is established a commission to be known as the President's Media Commission on Drug Abuse (hereinafter in this title referred to as the "Commission").

SEC. —. DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent narcotic and psychotropic drug abuse;

(2) act as an administrative and coordinating body for the voluntary combination of resources of—

(A) television, radio, motion picture, and print media;

(B) the advertising industry; and

(C) the corporate sector of the United States;

in order to assist the implementation of new programs and national strategies for dissemination of information intended to prevent narcotic and psychotropic drug abuse;

(3) provide and disseminate through the mass media public service announcements and * * *.

(A) monitor the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. —. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, and print media;

(3) the recording industry;

(4) other segments of the corporate sector of the United States; and

(5) experts in the prevention of narcotic and psychotropic drug abuse.

(b) TERMS.—(1) Except as provided in paragraph (2), (3), and (4), members shall be appointed for terms of 3 years.

(2) Of the members first appointed—

(A) 4 shall be appointed for terms of 1 year;

(B) 4 shall be appointed for terms of 2 years; and

(C) 4 shall be appointed for terms of 3 years;

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(4) A member may serve after the expiration of his term until his successor has taken office.

(c) BASIC PAY AND EXPENSES.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. —. MEETINGS.

(a) IN GENERAL.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d) VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members voting at a properly called meeting.

SEC. —. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR AND STAFF.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. —. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) MAILS.—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.

(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. —. REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements

produced by the Commission and published or broadcast.

HELMS (AND OTHERS) AMENDMENT NO. 3053

Mr. HELMS (for himself, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MELCHER, Mr. HATCH, Mr. SYMMS, Mr. HECHT Mr. THURMOND, Mr. DODD, Mr. HUMPHREY, Mr. MCCLURE, Mr. INOUYE, Mr. WILSON, Mr. TRIBLE, Mrs. KASSEBAUM) proposed an amendment which was subsequently modified, and to the bill (H.R. 5484), supra; as follows:

At the end of the bill, add the following:

SEC. —. (a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any country which has a government involved in the trade of illicit narcotics or is failing to cooperate with the U.S. in narcotics enforcement activities as defined in section 2002, or;

(B) any foreign country that imports sugar produced in Cuba, determined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia and Puerto Rico.

At the end of the pending amendment add the following:

SEC. —.Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

SEC. —. Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, syrups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;

(b) during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines.

BINGAMAN (AND OTHERS) AMENDMENT NO. 3054

Mr. BINGAMAN (for himself, Mr. DECONCINI, Mr. DOMENICI, and Mr. BRADLEY) proposed an amendment to the bill, H.R. 5484, supra, as follows:

Amend Section 4228 by redesignating subsection (c) as (d) and inserting a new subsection (c) to read as follows:

"(c)(1) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall establish at least one demonstration project to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stoke, diabetes, * * * depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

"(F) providing training and continuing education to employees of the service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) For purposes of this paragraph, the term 'health promotion' shall include:

"(A) reduction in the misuse of alcohol and drugs,

"(B) cessation of tobacco smoking,

"(C) improvement of nutrition,

"(D) improvement in physical fitness,

"(E) family planning, and

"(F) control of stress.

"(6) For purposes of this paragraph, the term 'disease prevention' shall include:

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.

"(7) Sec. 4228 is amended by adding at the end the following 'provided that $500,000 shall be made available for activities described under section 4228(c)(1).

D'AMATO (AND OTHERS) AMENDMENT NO. 3055

Mr. D'AMATO (for himself, Mr. TRIBLE, Mr. DOLE, Mrs. HAWKINS, Mr. MOYNIHAN and Mr. CHILES) proposed an amendment to the bill, H.R. 5484, supra, as follows:

At the appropriate place in the bill insert the following:

SEC. . SHORT TITLE.

This Act may be cited as the "Ballistic Knife Prohibition Act of 1986".

(a) PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES.—The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more then ten years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more than ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechansim.".

(b) NONMAILABILITY OF BALLISTIC KNIVES.—Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

DOMENICI (AND OTHERS) AMENDMENT NO. 3056

Mr. DOMENICI (for himself, Mr. DIXON, Mr. GORTON, Mr. GORE, Mr. HEINZ, Mr. BINGAMAN, Mr. DOLE, Mr. WILSON, Mr. NUNN, Mr. CHILES, Mr. LEVIN, Mr. THURMOND, Mr. DANFORTH, Mr. TRIBLE, Mr. HATFIELD, and Mr. DODD) proposed an amendment to the bill (H.R. 5485), supra; as follows:

At the end of the amendment add the following new title:

TITLE —HOMELESS ELIGIBILITY CLARIFICATION ACT

SECTION —. SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. —. SHELTER MEALS.

(a) DEFINITION OF FOOD.— Section 3(a)(8) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)(8)) is amended by striking out "women and children temporarily residing in public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "individuals temporarily residing in emergency shelters".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act is amended by striking out "public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "emergency shelters".

(c) PRICES CHARGED.—Section 7(b) of such Act (7 U.S.C. 2016(b)) is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, an emergency shelter may not charge prices for meals served to eligible households temporarily residing in such shelters that are higher than prices served to other individuals temporarily residing in such shelters.".

(d) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended by striking out "public and private nonprofit shelters that prepare and serve meals for battered women and children" and inserting in lieu thereof "emergency shelters that prepare and serve meals for individuals".

SEC. —. PREPARED MEALS.

Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) by striking out "and" at the end of clause (7); and

(2) by inserting before the period at the end thereof the following: ", and (9) in the case of individuals that do not reside in permanent dwellings or who do not have fixed mailing addresses, meals prepared by and served in public or private nonprofit establishments (eating or otherwise) that feed such individuals or in private establishments that contract with the appropriate agency of the State to serve meals to such individuals at concessional prices".

Subtitle B—Job Training for the Homeless

SEC. . JOB TRAINING FOR THE HOMELESS.

(a) ECONOMICALLY DISADVANTAGED TO INCLUDE HOMELESS.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F)" an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).".

(b) JOB TRAINING PLAN.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semicolon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. . TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI PROGRAM.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, and eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396(a)) is amended—

(1) by striking "and" at the end of paragraph (45);

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in permanent dwelling or does not have a fixed home or mailing address.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective October 1, 1986.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1986. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC. . SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end thereof the following new subsection:

"(p) The Secretary and the Secretary of Health and Human Services shall develop a system under which an individual applying for supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) prior to the discharge or release of the individual from a public institution under the pre-release program established under section 1635 of such Act shall also be permitted to apply for participation in the food stamp program by executing a single application.".

SEC. . DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

ABDNOR AMENDMENT NO. 3057

Mr. HATCH (for Mr. ABDNOR) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Subtitle B—Drug Free Schools and Communities Act of 1986 is hereby amended by striking "$500,000" in line 8, page 3, and inserting in lieu thereof "$650,000".

HATCH (AND KENNEDY) AMENDMENT NO. 3058

Mr. HATCH (for himself and Mr. KENNEDY) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Strike out section 4002(a) of the bill and insert in lieu thereof the following:

(a) Section 1911 is amended—

(1) by striking out "the purpose of grants and allotments under section 1913" and inserting in lieu thereof "purposes of carrying out this part";

(2) by striking out "$576,000,000" and inserting in lieu thereof "$686,000,000"; and

(3) by adding at the end thereof the following new sentence: "If the total amount appropriated under the preceding sentence for fiscal year 1987 exceeds $500,000,000, 27 percent of the amount of such excess shall be added to and included with the amounts otherwise available under this part for allotments to States under section 1913 for such fiscal year, 67 percent of the amount of such excess shall be available for allotments to States under section 1921 for such fiscal year, and 6 percent of the amount of such excess shall be available for transfer to the Administrator of Veterans' Affairs under section 1923.".

At the end of the first section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill, strike out the end quotation marks and the second period.

Strike out the second section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill and insert in lieu thereof the following:

"TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

"SEC. 1923. The Secretary shall transfer to the Administrator of Veterans' Affairs the amount which, under the second section of section 1911, is available for such transfer. The amount transferred pursuant to the preceding sentence shall be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug abuse dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.".

DIXON (AND OTHERS) AMENDMENT NO. 3059

Mr. DIXON (for himself, Mrs. HAWKINS, Mr. DECONCINI, Mr. MATTINGLY, and Mr. D'AMATO) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of the amdt add the following:

(a) GENERAL REQUIREMENT.—

(1) AUTHORITY TO LOCATE, PURSUE, AND SEIZE AIRCRAFT AND VESSELS.—Within 30 days after the date of the enactment of this Act, the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of United States borders by aircraft and vessels carrying narcotics. Such equipment and personnel shall be used to locate, pursue, and seize such vessels and aircraft and to arrest their crews. Military personnel may not make arrests of crew members of any such aircraft or vessels after the crew members have departed the aircraft or vessels, unless the military personnel are in hot pursuit.

(2) RADAR COVERAGE.—Within 30 days after the date of the enactment of this Act, the President shall deploy radar aircraft in reasonably available numbers so that during the hours of darkness there is continuous aerial radar coverage of the southern border of the United States, to the extent possible.

(3) PURSUIT AIRCRAFT.—The President, to the extent possible also shall deploy sufficient numbers of rotor wing and fixed wing aircraft to pursue and seize intruding aircraft detected by the radar aircraft referred to in paragraph (2). The President shall use personnel and equipment of the United States Customs Service and the Coast Guard to assist in carrying out this paragraph.

(4) USE OF NATIONAL GUARD AND RESERVES.—In carrying out this section, the President shall use members of the National Guard and the Reserves. The tours of such members shall correspond to their training commitments and shall be considered to be within their mission.

(5) EXPENSES.—The expenses of carrying out this section shall be borne by the Department of Defense.

(b) 45-DAY DEADLINE.—The President, to the extent possible shall substantially halt the unlawful penetration of United States borders by aircraft and vessels carrying narcotics within 45 days after the date of the enactment of this Act.

(c) REPORT.—Within 60 days after the date of the enactment of this Act, the President shall report to Congress the following:

(1) The effect on military readiness of the drug interdiction program required by this section and the costs in the areas of procurement, operation and maintenance, and personnel which are necessary to restore readiness to the level existing before commencement of such program.

(2) The number of aircraft, vessels, and persons interdicted during the operation of the drug interdiction program and the number of arrests and convictions resulting from such program.

(3) Recommendations for any changes in existing law that may be necessary to more efficiently carry out this program.

(d) REQUEST FOR FUNDING.—Within 90 days after the date of the enactment of this Act, the President shall submit to Congress a request for—

(1) the amount of funds spent as a result of the drug interdiction program required by this section; and

(2) the amount of funds needed to continue operation of the program through fiscal year 1987.

Such request shall include amounts necessary to restore the readiness of the Armed Forces to the level existing before commencement of the program.

(e) BUDGET REQUESTS.—Beginning with the budget request for fiscal year 1988 and for each fiscal year thereafter, the President shall submit in his budget for the Department of Defense a request for funds for the drug interdiction program required by this section in the form of a separate budget function.

MATTINGLY (AND OTHERS) AMENDMENT NO. 3060

Mr. MATTINGLY (for himself, Mrs. HAWKINS, Mr. D'AMATO, and Mr. DENTON) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill add the following section:

SEC. . DEATH PENALTY FOR CERTAIN CONTINUING CRIMINAL ENTERPRISE DRUG OFFENSES.

(a) ELEMENTS OF OFFENSE.—Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "(a) Any" and inserting—

"(a)(1) Except as otherwise provided in this section, any" in lieu thereof;

(2) by striking out "; except that if" and inserting ". If" in lieu thereof; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and thereby knowingly causes the death of any other individual, the individual so engaging shall be subject to the death penalty in accordance with this section.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH * * *.—

"HEARING REQUIRED WITH RESPECT TO THE DEATH PENALTY

"(d) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"NOTICE BY THE GOVERNMENT IN DEATH PENALTY CASES

"(e)(1) Whenever the Government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"HEARING BEFORE COURT OR JURY

"(f)(1) When the attorney for the Government has filed a notice as required under subsection (d) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the

approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(g) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (j) and (k), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (k), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(h) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (k), found to exist. If one of the aggravating factors set forth in subsection (k)(1) and another of the aggravating factors set forth in subsection (k) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of any aggravating or mitigating factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (k)(1) is not found to exist or an aggravating factor set forth in subsection (k)(1) is found to exist but no other aggravating factor set forth in subsection (k) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagraph (k)(1) and one or more of the other aggravating factors set forth in subsection (k) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(i) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(j) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than 18 years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS

"(k) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim; or

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim,

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (a)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) The violation of this chapter in relation to which the conduct described in subsection (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(8) The defendent procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) The defendent committed the offense as consideration for the receipt, or in the expectation of the receipt, or anything of pecuniary value.

"(10) The defendant committed the offense against a judge, a law-enforcement officer, or an employee of a penal or correctional institution, while the victim was performing official duties or because of that victim's status as a public servant of the United States, or a State or political subdivision of the United States. For purposes of this paragraph the term 'law-enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(l) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(m) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.".

"APPEAL IN CAPITAL CASES

"(n)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with the failure to find sufficient mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

DECONCINI (AND LEAHY) AMENDMENT NO. 3061

Mr. DECONCINI. (for himself and Mr. LEAHY) proposed an amendment to the bill (H.R. 5484), supra; as follows:

In Subtitle B-Drug Possession Penalty Act of 1986, Section 1052 Penalty for Simple Possession, redesignate (b) as (c) and add the following new (b):

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provisions of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

DOMENICI (AND OTHERS) AMENDMENT NO. 3062

Mr. DOMENICI (for himself, Mr. MATTINGLY, Mr. DENTON, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. WILSON, Mr. TRIBLE, and Mr. SYMMS) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place insert the following:

SEC. 4016. EFFORTS OF THE ENTERTAINMENT INDUSTRY

It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States; whereas this problem is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and the entertainment industry further is encouraged to develop films, televison programs, records, and videos which encourage the rejection of illegal drug usage.

DANFORTH AMENDMENT NO. 3063

Mr. DANFORTH proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill, insert the following:

TITLE ——COMMERCIAL MOTOR VEHICLE SAFETY

SHORT TITLE

SEC. —01. This title may be cited as the: "Commercial Motor Vehicle Safety Act of 1986".

PURPOSE

SEC. —02. The purpose of this title is to enhance the safe operation of commercial motor vehicles on the Nation's highways by developing national uniform standards for the testing, licensing, and qualification of commercial motor vehicle operators, and by licensing inspections of commercial motor vehicle operators and the equipment they operate.

DEFINITIONS

SEC. —03. As used in this title, the term—

(1) "commerce" means—

(A) trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside of the United States); or

(B) trade, traffic, or transportation in the United States which affects any trade, traffic, or transportation described in subparagraph (A);

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property if—

(A) such vehicle has a gross vehicle weight rating of twenty-six thousand and one or more pounds, or such lower weight rating (not less than ten thousand pounds) as the Secretary considered appropriate;

(B) such vehicle is designed to transport more than fifteen passengers, including the driver; or

(C) such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(3) "controlled substance" shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety;

(5) "employer" means any person engaged in a business in commerce who owns or leases a commercial motor vehicle in connection with such business, or assigns employees to operate such vehicle;

(6) "Secretary" means the Secretary of Transportation; and

(7) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or the Commonwealth of the Northern Marianas.

NATIONAL UNIFORM COMMERCIAL MOTOR VEHICLE OPERATORS LICENSE

SEC. —04. (a)(1) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which establish minimum Federal standards for the licensing, testing, qualifications and classification of operators of commercial motor vehicles. Such regulations shall, at a minimum—

(A) prohibit any person who operates a commercial motor vehicle in commerce from possessing more than one license to operate a commercial motor vehicle;

(B) establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(C) require a driving test of each person who operates or will operate a commercial vehicle in commerce in the type of vehicle such person operates or will operate, except that the Secretary may, by regulation, permit any State to waive such test in the case of any such person who applies for renewal of a license to operate a commercial motor vehicle;

(D) establish minimum scores for passing such tests;

(E) ensure that each person taking such tests is qualified to operate a commercial motor vehicle in commerce under regulations promulgated under this section, regulations contained in subpart E of part 391 of title 49 of the Code of Federal Regulations, and such other Federal Motor Carrier Safety Regulations contained in title 49 of the Code of Federal Regulations as the Secretary considers appropriate;

(F) establish a schedule of offenses and corresponding suspensions, revocations and cancellations for cause of licenses to operate commercial motor vehicles, which shall include requirements for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit so such a test or who is found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, and for the immediate revo-

cation of the operator's license of any individual who has been twice determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test, or who has been twice determined to have operated a commercial motor vehicle while under the influence of a controlled substance or who has twice refused to submit to such a test;

(G) establish a system of classification for licensing that provides different minimum Federal testing standards for operation of different classes of commercial motor vehicles; and

(H) provide that each license to operate a commercial motor vehicle shall contain, at a minimum—

(i) the legal name, date of birth (including day, month and year) sex, and a physical description of the person to whom such license is issued;

(ii) other identifying information which the Secretary considers necessary or appropriate;

(iii) the type of commercial motor vehicle which such person is authorized to operate under such license;

(iv) the name of the State which issued such license; and

(v) the dates between which such license is valid.

(2) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which shall be in addition to regulations promulgated under paragraph (1) of this subsection and which shall establish minimum Federal standards for the licensing, testing, qualifications and classification of any person who operates or will operate a commercial motor vehicle carrying a hazardous material (as defined in section 103(2) of the Hazardous Materials Transportation Act (49 App. U.S.C 1802(2)). Such regulations shall—

(A) ensure that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such hazardous material issued by the Secretary under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.):

(B) establish minimum Federal standards for, and scores for passing, written tests which ensure that such person is knowledgeable regarding (i) all such regulations, (ii) the basic properties and handling of such hazardous material, and (iii) the appropriate response to emergencies arising out of the transportation of such hazardous material; and

(C) establish minimum Federal standards for driving tests which ensure that such person is knowledgeable regarding the type of vehicle that such person operates or will operate and regarding the safety system of such vehicle.

The Secretary may exempt any such person from any requirement of this title if the material to be transported is a hazardous material listed pursuant to section 306(a) of the Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation, or if the material to be transported is a consumer commodity or limited quantity hazardous material, as defined in section 171.8 of title 49 of the Code of Federal Regulations.

(3)(A) Section 521(b) of title 49, United States Code, is amended—

(i) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(ii) by inserting immediately after paragraph (11) the following:

"(12) The provisions of this subsection shall apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, except that—

"(A) the amount to be assessed under this subsection for any such violation shall not exceed $5,000 for each such violation; and

"(B) the exceptions regarding employees in paragraphs (2) and (6) of this subsection shall not apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, but (i) in the case of paragraph (2) of this subsection, the amount to be assessed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation, and (ii) in the case of paragraph (6) of this subsection, the penalty to be imposed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation or imprisonment for a term not to exceed one year, or both.".

(B) The Secretary shall establish guidelines for civil and criminal penalties to be imposed by the States for a violation of this subsection. Such penalties shall not exceed $5,000 for each such violation, and shall not provide for imprisonment of more than one year.

(b)(1) No person may operate a commercial motor vehicle in commerce unless such person—

(A) complies with all requirements imposed by regulations promulgated under subsection (a) of this section; and

(B) has a blood alcohol content level of less than 0.04 percent while operating a commercial motor vehicle.

(2)(A) Except as provided in subparagraph (B) of this paragraph, paragraph (1) of this subsection shall become applicable with respect to any person who operates or will operate a commercial motor vehicle in commerce on the date on which the State in which such person is domiciled adopts a classified licensing program under subsection (c)(1) of this section or September 1, 1989, whichever is earlier, except that, with respect to a person to whom a license to operate a commercial motor vehicle has been issued on or before such applicable date, who has not been found to have violated a State or local law relating to motor vehicle traffic control (other than a parking violation) in the three-year period ending on such date, and who has not been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle in commerce or has had a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause at any time during such three-year period, paragraph (1) of this subsection shall only take effect on the date after such date on which—

(i) such license is required to be renewed under State law,

(ii) such person is found to have violated such a State or local law, or

(iii) such person is disqualified pursuant to title 49 of the Code of Federal Regulations by the Secretary from operating a commercial motor vehicle in commerce and has had such person's license suspended, revoked or cancelled for cause by a State,

whichever is earliest.

(B) If any such person is not domiciled in a State that has adopted such a classified licensing program, the Secretary may, in accordance with regulations to be prescribed by the Secretary, permit such person to obtain a license to operate a commercial motor vehicle from any State that has adopted such a program.

(c) On or before September 1, 1989, each State shall, at a minimum—

(1) adopt and administer a classified licensing program for the issuance of licenses to operate commercial motor vehicles that includes testing and qualification standards for persons who operate commercial motor vehicles in commerce in accordance with all of the minimum Federal standards established by the Secretary under subsection (a) of this section, which program (A) may include standards for its domiciliaries that are more stringent than the minimum Federal standards established by the Secretary under subsection (a) of this section; and (B) shall provide that such State shall recognize any license issued by another State if such license meets all of the Federal minimum standards established by the Secretary under subsection (a) of this section;

(2) not issue a license to operate a commercial motor vehicle to a person unless such person passes a written test and driving test for the operation of a commercial motor vehicle which complies with such minimum standards and complies with all requirements imposed by regulations promulgated under subsection (a) of this section;

(3) ensure that each classified license to operate a commercial motor vehicle contains the information described in subsection (a)(1)(H) of this section;

(4) Until the information system established under section ——05 of this title provides a means of rapid communication of the information specified in such section, (A) notify the Secretary, before the issuance of a classified license to operate a commercial motor vehicle, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license; (B) within 30 days after issuance of a classified license to operate a commercial motor vehicle, notify the Secretary of the issuance of such a license; and (C) maintain information regarding and, upon the request of another State, transmit to such State or, upon the request of an employer or prospective employer, transmit at such State's option to such employer or prospective employer, to the extent permitted by law, information regarding (i) any suspension, revocation or cancellation for cause of such a license and any disqualification pursuant to title 49 of the Code of Federal Regulations of the holder of such a classified license from operating a commercial motor vehicle for a period of 60 days or more, (ii) a decision to deny for cause a license to a person applying for such a license, or (iii) the conviction of the holder of such a classified license of any of the offenses specified in section ——05(b)(2) of this title;

(5) when the information system established under section ——05 of this title allows for the rapid communication of information, comply with the requirements of all regulations within such time periods as the Secretary establishes under section ——05(d) of this title, including a requirement that the State shall respond to all requests for information from employers;

(6) before issuance of a classified license to operate a commercial motor vehicle, contact any other State which has issued to such person such a license to determine the

driving record of such person and, if the State determines as a result of such contact that such person has been disqualified pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle by the Secretary, or has had a license suspended, revoked or cancelled for cause for violation of an offense pursuant to subsection (a)(1)(F) of this section, within three years before application has been made for such a classified license, not issue such a classified license to such person;

(7) not issue a classified license to operate a commercial motor vehicle to any person to whom such a license has been issued by any other State unless such person first returns such license issued by such other State;

(8) prior to issuing a classified license to operate a commercial motor vehicle to any person, consult the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401, note) (after such Register is determined by the Secretary to be operational) to determine whether such person has either been disqualified from operating a motor vehicle other than a commercial motor vehicle, or has had a license other than a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause, within three years before application has been made for such a classified license, or has been convicted of any of the offenses specified in section 205(a) of the National Driver Register Act of 1982 and, if the State is informed that such person has been so disqualified or convicted or such license has been suspended, revoked or cancelled for cause, not issue a classified license to operate a commercial motor vehicle to such person;

(9) impose such penalties for a violation of subsection (a) of this section as the State determines appropriate, if such penalties are the same as or more stringent than the guidelines established by the Secretary in subsection (b)(3)(B) of this section; and

(10) suspend, revoke or cancel, in accordance with subsection (a)(1)(F) of this section, a license to operate a commercial motor vehicle.

(d)(1) The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to comply with all provisions of subsection (c) of this section.

(2) The amount of a grant under this subsection to any State shall not be less than $100,000 in any fiscal year.

(3) The Secretary may not make a grant to any State under this subsection unless such State agrees that the aggregate expenditure of funds of the State, exclusive of Federal funds, for testing and licensing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of enactment of this Act.

(4) A State which receives a grant under this subsection may use the funds provided under such grant only for testing and licensing of operators of commercial motor vehicles.

(5) A grant made under this subsection shall be for a period of 1 year.

(6) Funds made available to carry out this subsection shall remain available for obligation by the Secretary for the fiscal year in which such funds are made available and the three fiscal years after such fiscal year.

(7) There shall be available to the Secretary to carry out this subsection—

(A) $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for each of fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) after deducting the amount permitted under section 402(c) of title 23, United States Code, $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e)(1) The Secretary shall withhold highway funds from any State that is not in compliance with this section after September 30, 1992.

(2) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(3) The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second fiscal year beginning after September 30, 1992, and the first day of each fiscal year thereafter, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(4)(A) The Secretary shall withhold 2 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(B) The Secretary shall withhold not less than 2 percent nor more than 5 percent, as the Secretary determines to be appropriate, of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second through fifth fiscal years beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(C) The Secretary shall withhold not less than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the sixth fiscal year, and each fiscal year thereafter, beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(5)(A) Any funds withheld under this subsection from apportionment to any State after September 30, 1992, shall remain available for apportionment to such state as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) If, before the last day of the period for which funds withheld under this subsection from apportionment are to remain available for apportionment to a State under subparagraph (A) of this paragraph, the State complies, with the provisions of this section, the Secretary shall, on the day following the date on which such State complies apportion to such State the withheld funds remaining available for apportionment to such State.

(C) Any funds apportioned pursuant to subparagraph (B) of this paragraph shall remain available for expenditure as follows:

(i) Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

(ii) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of title 23, United States Code, shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse.

(D) If, at the end of the period for which funds withheld under this subsection from apportionment are available for apportionment to a State under subparagraph (A) of this paragraph, the State has not complied with the provisions of this section, such funds shall lapse.

COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM

SEC. —05. (a) Not later than January 1, 1989, the Secretary, after consultation with the States, shall cause to be in operation an information system pertaining to the driving status and licensing of operators of commercial motor vehicles. The information system shall serve as a clearinghouse by which the States may communicate rapidly concerning the licensing, identification and driving records of operators of commercial motor vehicles.

(b) The information system established under this section shall—

(1) provide for a depository of information that will, at a minimum, include (with respect to each operator of a commercial motor vehicle)—

(A) the birth date and physical description of such operator, and any other information which the Secretary considers necessary or appropriate to identify specifically such operator;

(B) the address of such operator; and

(C) all States in which such operator currently has a license to operate a commercial motor vehicle; and

(2) provide a system of communication among States that, at a minimum, shall provide exchange of information specified in paragraph (1) of this subsection and information regarding whether such operator has been denied a license to operate a commercial motor vehicle, has been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle, has had a license suspended, revoked or cancelled for cause, or has been convicted under the laws of any State for (A) operating a commercial

motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (B) violating a traffic rule or ordinance arising in connection with a fatal traffic accident, reckless driving, or racing on the highways and involving a commercial motor vehicle; (C) failing to render aid or provide identification when involved in an accident involving a commercial motor vehicle which resulted in a fatality or personal injury; or (D) committing perjury or knowingly making a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a commercial motor vehicle.

(c)(1) Upon request of a State, the Secretary or a State, as appropriate, shall make available to the requesting State information in the information system established under this section. Upon request of an employer or prospective employer of an employee, the Secretary or a State, as appropriate, shall, to the extent otherwise permitted by law, made available to such employer or prospective employer information in such system relating to such employee.

(2) Any prospective employer of a person as an operator of a commercial motor vehicle shall consult the information system established under this section to determine, prior to employing such person, whether a license to operate a commercial motor vehicle issued to such person has been suspended, revoked or cancelled for cause. If such prospective employer determines, as a result of such consultation, that such person's license has been suspended, revoked or cancelled for cause, the prospective employer shall not employ such person as an operator of a commercial motor vehicle.

(d) When the information system required by this section has become available, the Secretary shall issue regulations establishing appropriate time periods for transmission of information, as provided in section —04(c) (4) and (5) of this title.

(e) The Secretary shall establish and the Secretary or a State, as appropriate, shall collect fees for utilization of the information system established under this section. The amount of fees collected by the Secretary or a State under this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected by the Secretary under this subsection in the general fund of the Treasury.

(f) There shall be available for fiscal year 1987 to the Secretary for purposes of establishing the information system under this section not to exceed $2,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304). Such sums shall remain available until expended.

FREQUENT INSPECTIONS

SEC. —06. (a) Section 402(b)(1) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period in subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(H) with respect to any fiscal year beginning with fiscal year 1989, provides for the adoption and implementation of an effective program to conduct inspections of commercial motor vehicles, which program shall provide—

"(i) that commercial motor vehicles are inspected frequently (as determined by the Secretary), and that such inspections are conducted at roadside;

"(ii) for the administration of observations or tests, or both, to determine the blood alcohol content level of the operator of a commercial motor vehicle; and

"(iii) for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined, as a result of an observation or test administered under clause (ii) of this subparagraph, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined, as a result of such an observation or test, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test.".

(b) Section 402(b) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)) is amended by adding at the end thereof the following:

"(3)(A) As part of a grant made under this subsection, the Secretary may also provide funds to encourage the States to adopt and implement programs providing for the administration of tests to determine whether the operator of a commercial motor vehicle is under the influence of a controlled substance while operating such motor vehicle.

"(B) For the purpose of this subsection, the term 'controlled substance' shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6)).".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. —07. (a) Section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) is amended—

(1) by striking "$40,000,000" and inserting in lieu thereof "$50,000,000";

(2) by striking "and" after "1987,";

(3) by striking "$50,000,000" and inserting in lieu thereof "$60,000,000"; and

(4) by striking "1988." and inserting in lieu thereof "1988; not to exceed $70,000,000 in the fiscal year ending September 30, 1989; and not to exceed $80,000,000 in the fiscal year ending September 30, 1990.".

(b) Any activity of the Secretary under this title shall only be undertaken to the extent that appropriations have been made available in advance for such activity.

SPECTER AMENDMENT NO. 3064

Mr. SPECTER proposed an amendment to amendment No. 3063 proposed by Mr. DANFORTH to the bill (H.R. 5484), supra; as follows:

At the end of the amendment, add the following:

STUDY BY THE DEPARTMENT OF TRANSPORTATION

SEC. —. The Secretary of Transportation shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirement of—04(a)(1)(F) regarding blood alcohol content level impacts on operators of commercial motor vehicles who are required by their employers to be available to operate such commercial motor vehicles on short notice.

HARKIN AMENDMENT NO. 3065

Mr. HARKIN proposed an amendment to amendment No. 3062 proposed by Mr. DOMENICI (and others) to the bill (H.R. 5484), supra; as follows:

On page , line , after , insert the following:

It is the sense of Congress that, whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States; whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment and written media industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol and the entertainment industry and written media further is encouraged to develop films, television programs, records, and videos and advertising which encourage the rejection of illegal drug usage and alcohol use.

LEAHY (AND OTHERS) AMENDMENT NO. 3066

Mr. LEAHY (for himself, Mr. HATCH, and Mr. DENTON) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Strike section 1802 of the bill and insert in lieu thereof the following:

SEC. 1802. CRIMINAL ORGANIZATIONS, FEES AND FEE WAIVERS.

(a) Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceeding,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informants' name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence [(as defined in Executive Order 12333)], or international terrorism [(as defined in the Foreign Intelligence Surveillance Act)], and the existence of the records is classified information as provided in sub-

section (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

(b) Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or (II) a requester is indigent and can demonstrate a compelling need for the documents.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (i)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this paragraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo provided that the court's review of the matter shall be limited to the record before the agency.".

MATHIAS (AND OTHERS) AMENDMENT NO. 3067

Mr. MATHIAS (for Mr. LEAHY, for himself, Mr. MATHIAS, and Mr. THURMOND) proposed an amendment to amendment No. 3066 proposed by Mr. LEAHY (and others) to the bill (H.R. 5484), supra; as follows:

At the end of the amendment insert the following:

TITLE *—ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

SEC *01. SHORT TITLE.

This title may be cited as the "Electronic Communications Privacy Act of 1986".

Subtitle A—Interception of Communications and Related Matters

SEC. *11. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": *Provided*, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. *12. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. *13. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1,000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. *14. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. *15. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. *16. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) REIMBURSEMENT FOR ASSISTANCE.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) COMMENCEMENT OF THIRTY-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not rea-

sonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. *17. INTELLIGENCE ACTIVITIES.

(a) IN GENERAL.—Nothing in this title or the amendments made by this title constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. *18. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. *19. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. *20. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. *21. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this subtitle shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this title.

(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section *14 of this title shall take effect on the date of enactment of this title.

Subtitle B-Stored Wire and Electronic Communications and Transactional Records Access

SEC. *31. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.

"2701. Unlawful access to stored communications.

"2702. Disclosure of contents.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3 destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if

the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access

SEC. *32. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

Subtitle C—Pen Registers and Trap and Trace Devices

SEC. *41. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.

"3121. General prohibition on pen register and trap and trace device use; exception.

"3122. Application for an order for a pen register or a trap and trace device.

"3123. Issuance of an order for a pen register or a trap or trace device.

"3124. Assistance in installation and use of a pen register or a trap and trace device.

"3125. Reports concerning pen registers and trap and trace devices.

"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

"(3) where the consent of the user of that service has been obtained.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) DEFENSE.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices ..... 3121".

SEC. *42. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this subtitle; or

(2) the date two years after the date of the enactment of this title.

SEC. *43. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

CHILES AMENDMENT NO. 3068

Mr. CHILES proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill, insert the following:

SECTION 1. RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) IN GENERAL.—Subchapter B of chapter 78 of the Internal Revenue Code of 1954 (relating to general powers and duties) is amended by adding at the end thereof the following new section:

SEC. 7624. REIMBURSEMENT TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) AUTHORIZATION OF REIMBURSEMENT.—Whenever a State or local law enforcement agency provides information to the Internal Revenue Service that substantially contributes to the recovery of Federal taxes, such agency shall be reimbursed by the Internal

Revenue Service for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary and overtime) not to exceed 10 percent of the sum ultimately recovered. The Internal Revenue Service shall maintain records reflecting the receipt of information from the contributing agency, and shall notify the agency when a recovery has been effected. Following such notification, the agency shall submit a statement detailing the investigative costs incurred. Where more than 1 State or local agency has given information that substantially contributes to the recovery of Federal taxes, the Internal Revenue Service shall equitably distribute the costs reimbursements among those agencies up to an aggregate sum of 10 percent of the taxes recovered.

(b) ESTABLISHMENT OF A FUND.—The Commissioner of the Internal Revenue Service shall establish a fund for recovering that portion of recovered Federal taxes authorized under subsection (a) and intended as reimbursements for state and local law enforcement agencies. In conjunction with the fund, the Commissioner shall develop guidelines on the procedures and timetables for reimbursing those law enforcement agencies which have contributed to the recoupment of Federal taxes.

(c) REIMBURSEMENT.—Reimbursements under section (a) shall be made directly from the fund under subsection (b) prior to the deposit of such funds into the United States Treasury.

(d) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 7624. Reimbursement to State and local law enforcement agencies."

GORTON AMENDMENT NO. 3069

Mr. HATCH (for Mr. GORTON) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . (a) The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes;

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(b) On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(c) As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

METZENBAUM AMENDMENT NO. 3070

Mr. METZENBAUM proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of title IV, insert the following:

SEC. . INFANT FORMULA.

Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively;

(2) by striking out the last sentence of paragraph (1) of subsection (f) (as redesignated by clause (1) of this section) and inserting in lieu thereof the following new sentence: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.";

(3) by striking out "(a) and (b)" in the first sentence of subsection (g)(1) (as redesignated by clause (1) of this section) and insert in lieu thereof "(a), (b), and (c)";

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(d)(1)";

(5) by striking out "(c)(1)(B)" in such sentence and inserting in lieu thereof "(d)(1)(B)";

(6) by striking out "(a) and (b)" in subsection (g)(2) (as redesignated by clause (1) of this section) and inserting in lieu thereof "(a), (b), and (c)";

(7) by striking out "subsection (a)(2)" in subsection (h) (as redesignated by clause (1) of this section) and inserting in lieu thereof "subsection (a)(3)"; and

(8) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a)(1) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (h);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under this section.

"(2)(A) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (h).

"(B) The Secretary shall by regulation establish—

"(i) good manufacturing practices for infant formulas, including quality control procedures; and

"(ii) requirements respecting the retention of records,

that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this section and is manufactured in a manner designed to prevent adulteration of the infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health.

"(C) The good manufacturing practices and quality contol procedures prescribed by the Secretary under subparagraph (B)(i) shall include requirements for—

"(i) the testing, by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for each nutrient required pursuant to subsection (h) prior to the distribution of such batch in accordance with the provisions of subparagraph (D);

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas in order to ensure that such formulas are in compliance with this section;

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health; and

"(iv) the conduct by the manufacturer of an infant formula of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (B)(i).

"(D)(i) At the final product stage, each batch of infant formula shall be tested for Vitamin A, Vitamin B1, Vitamin C, and Vitamin E to ensure that such infant forumla is in compliance with the requirements of this section relating to such vitamins.

"(ii) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required pursuant to this section contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(iii) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula pursuant to subsection (h) for which testing has not been conducted pursuant to clause (i) or (ii). Testing under the preceding sentence shall be conducted in order to—

"(I) ensure that each batch of such infant formula is in compliance with the requirements of this section relating to such nutrients; and

"(II) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(iv) For purposes of this section, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(E) The record retention requirements prescribed by the Secretary under clause (ii) of subparagraph (B) shall include requirements for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under clause (i) of such subparagraph, including records containing the results of all testing required under subparagraph (C);

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers;

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all permix certifications and guarantees of analysis;

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula; and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C);

"(v) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under subparagraph (C)(iv); and

"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas.

"(F)(i) Records required under subparagraphs (B)(ii) and (E) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii) of this subparagraph, such records shall be made available to the Secretary for review and duplication upon request of the Secretary, including records and files maintained under clauses (i) through (v) of subparagraph (E) which may reveal the possible existence of a hazard to health.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by subparagraph (C)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(G) In prescribing requirements for audits under subparagraph (C)(iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (h); and

"(B) revise the required level for any nutrient required by subsection (h).

"(4) If pursuant to paragraph (3), the Secretary adds a nutrient to the list of nutrients in the table in subsection (h), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with clause (i), (ii) or (iii) of paragraph (2)(D).

"(b)(1)(A) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(i) such person has, prior to introducing such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula; and

"(ii) such person has at least 90 days prior to marketing such new infant formula, made the submission to the Secretary required by subsection (c)(1).

"(B) For purposes of this section, the term 'new infant formula' includes—

"(i) an infant formula manufactured by a person which has not previously manufactured an infant formula; and

"(ii) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this subparagraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(2) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, prior to the first processing of such formula, make the submission to the Secretary required by subsection (c)(1).

"(c)(1) A person shall, with respect to any infant formula subject to subsection (b), make a submission to the Secretary. Each such submission shall include—

"(A) the quantitative formulation of the infant formula;

"(B) a description of any reformulation of the formula or change in processing of the infant formula;

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (a)(2)(A) and (h), as demonstrated by the testing required under subsection (a)(2)(C); and

"(D) assurances that the processing of the infant formula complies with subsection (a)(2)(B)(i).

"(2) After the first production of an infant formula subject to subsection (b)(1), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsections (a)(2)(A), (a)(2)(B)(i), (a)(2)(C)(i), (a)(2)(C)(iii), and (h).

"(d)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (h); or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(e)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment for such time that the Secretary determines necessary to inform the public of such recall.".

HELMS AMENDMENT NO. 3071

Mr. HELMS proposed an amendment to amendment No. 3070 proposed

by Mr. METZENBAUM to the bill (H.R. 5484), supra; as follows:

At an appropriate place in the pending amendment, add the following:

"SEC. . Section 223(b) of the Communications Act of 1934 is amended—

(1) in paragraph (1)(A), by striking out 'under eighteen years of age or to any other person without that person's consent';

(2) by striking out paragraph (2);

(3) in paragraph (4), by striking out 'paragraphs (1) and (3)' and inserting in lieu thereof 'paragraphs (1) and (2)'; and

(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.".

EVANS AMENDMENT NO. 3072

Mr. EVANS proposed an amendment to the bill (H.R. 5484), supra; as follows:

After the word "aircraft" in Sec. 3004(e)(1)(A), insert the following:

"*Provided*, that no funds may be expended to modify any existing aircraft for air surveillance purposes unless the proposed modifications comply with validated requirements and specifications developed by the Coast Guard."

EVANS (AND BIDEN) AMENDMENT NO. 3073

Mr. EVANS (for himself and Mr. BIDEN) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of Title I, insert the following new subtitle:

SEC. . SHORT TITLE.

This subtitle may be cited as the White House Conference on Drug Abuse and Control Act".

SEC. . ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference on Drug Abuse and Control". The members of the Conference shall be appointed by the President.

SEC. . PURPOSE.

The purposes of the Conference are:

(a) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(b) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(c) to highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse.

(d) to examine the essential role of parents and family members in preventing the basic causes of drug abuse and in successful treatment efforts.

SEC. . RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(a) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solitication of illicit drugs and the need to provide greater coordination among such programs;

(b) the impact of drug abuse upon American education and the effectiveness of drug education programs in our schools, with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(c) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs; and

(d) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs.

SEC. . CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections and , the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(a) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, Secretary of Transportation, and the Director of ACTION;

(b) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and Mayors of Cities;

(c) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(d) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, education and law enforcement.

SEC. . ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. . FINAL REPORT.

Not later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections and . The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

SEC. . AVAILABILITY OF FUNDS.

No more than $2,000,000 shall be appropriated to carry out this subtitle. Amounts appropriated under this section shall remain available until expended.

SEC. . EFFECTIVE DATE.

This section shall become effective upon enactment of this Act.

METZENBAUM AMENDMENT NO. 3074

Mr. METZENBAUM proposed an amendment to the bill H.R. 5484, supra; as follows:

Section 4106 of the bill is amended—

(1) in subsection (c)(2)(B) by inserting after "administrators," the following: "athletic directors,"; and

(2) in subsection (d)(1)—

(A) in clause (D) by inserting after "counselors," the following: "athletic directors,"; and

(B) by redesignating clause (I) as clause (J) and inserting after clause (H) the following:

"(I) special programs and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students; or

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DOLE AMENDMENT NO. 3075

Mr. DOLE proposed and amendment to the bill (H.R. 5484), supra; as follows:

To be added in the appropriate interdiction section:

"SEC. . Effective October 1, 1986 and ending September 30, 1987 the number of officers of the Marine Corps authorized under section 525(b)(1) of Title 10, United States Code, to be on active duty in the grade of lieutenant general is increased by one. This authorization of lieutenant general is contingent on a Marine Corps lieutenant general serving as Director of the Department of Defense Task Force on Drug Enforcement."

HAWKINS (AND OTHERS) AMENDMENT NO. 3076

Mrs. HAWKINS (for himself, Mr. HELMS, Mr. THURMOND, and Mr. WILSON) proposed an amendment to the bill H.R. 5484, supra; as follows:

At the end of title III, add the following new subtitle:

Subtitle *—National Forest System Drug Control

SEC. 3 ** 1. SHORT TITLE.

This subtitle may be cited as the "National Forest System Drug Control Act of 1986".

SEC. 3 ** 2. PURPOSE.

(a) The purpose of this subtitle is to authorize the Secretary of Agriculture (hereinafter in this subtitle referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances.

(b) Nothing in this subtitle shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this subtitle, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 3 ** 3. POWERS.

For the purposes of this subtitle; if specifically designated by the Secretary and specially trained, not to exceed 500 officers and employees of the Forest Service when in the performance of their duties shall have authority within the boundaries of the National Forest System to—

(1) carry firearms;

(2) conduct investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has reasonable grounds to believe are being committed in his presence or view, or for a felony with or without a warrant if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. 3**4. COOPERATION.

For the purposes of this subtitle, in exercising the authority provided by section 3**3—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed; and

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, both within and outside the boundaries of the National Forest System.

SEC. 3**5. PENALTY.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.".

SEC. 3**6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $20,000,000 for each fiscal year to carry out this subtitle.

SEC. 3**7. APPROVAL OF SECRETARY OF AGRICULTURE AND ATTORNEY GENERAL.

The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

LEVIN (AND DECONCINI AMENDMENT NO. 3077

Mr. LEVIN (for himself and Mr. DECONCINI) proposed an amendment to the bill, H.R. 5484, supra, as follows:

An amendment to Section 1102 of H.R. 5484 by striking all after the word "by" on line 23, page 19 through the word "offense" on line 1, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b) of this title, or twice the fine authorized by section 401(b) of this title, or both, and at least twice any special parole term authorized by section 401(b) of this title for a first offense."

H.R. 5484 is amended in section 1102 by striking all after the word "by" on line 5, page 20, through the word "section" on line 10, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b) of this title for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this title for a first offense under that section."

H.R. 5484 is further amended by adding a new section 1105 as follows: "section 405 of the Controlled Substances Act is further amended by striking in paragraph (a) all after the second word "by" and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), a fine up to twice that authorized by section 401(b), or both."

H.R. 5484 is further amended by adding a new section 1106 as follows: "Section 405 of the Controlled Substances Act is amended by striking in paragraph (b) all after the second word "by" and adding the following in lieu thereof: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b), a fine up to three times that authorized by section 401(b), or both. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

H.R. 5484 is further amended by adding a new section 1108 as follows: "Section 405A of the Controlled Substances Act is amended by striking all after the second word "by" and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), and a fine of up to twice that authorized by section 401(b), or both; and (2) at least twice any special parole term authorized by section 401(b) for a first offense involving the same controlled substance and schedule. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

HELMS AMENDMENT NO. 3078

Mr. HELMS proposed an amendment to the bill, H.R. 5484, supra as follows:

At an appropriate place in the bill; add the following:

SEC. . The first section of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 211a) is amended by adding at the end thereof the following:

"The Secretary of State shall prescribe such regulations as shall be necessary to establish procedures for indicating on passports issued by the United States the fact that the holder of such passport has been convicted of an offense under a Federal or State law relating to controlled substances or has been assessed a fine or civil penalty or has incurred a forfeiture under any Federal or State law relating to controlled substances.".

MATHIAS (AND MOYNIHAN) AMENDMENT NO. 3079

Mr. MATHIAS (for himself and Mr. MOYNIHAN) proposed an amendment to the bill, H.R. 5484, supra as follows:

At the end of the bill insert the following new subtitle:

Subtitle * —American Conservation Corps Act of 1986

SECTION *01. SHORT TITLE.

This subtitle may be cited as the "American Conservation Corps Act of 1986".

SEC. *02. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) conserving or developing natural and cultural resources and enhancing and maintaining environmentally important lands and waters through the use of the Nation's young men and women is beneficial not only to the youth of the Nation by providing them with education and work opportunities but also for the Nation's economy and its environment; and

(2) through this work experience opportunity, the Nation's youth will further their understanding and appreciation of the natural and cultural resources in addition to learning basic and fundamental work ethics including discipline, cooperation, understanding to live and work with others, and learning the value of a day's work for a day's wages.

(b) PURPOSE.—It is the purpose of this subtitle to—

(1)(A) enhance and maintain conservation, rehabilitation, and improvement work on public lands and Indian lands,

(B) improve and restore public lands and Indian lands, resources, and facilities,

(C) conserve energy, and

(D) restore and maintain community lands, resources, and facilities;

(2) establish an American Conservation Corps to carry out a program to improve, restore, maintain, and conserve these lands and resources in the most cost-effective manner;

(3) assist State and local governments and Indian tribes in carrying out needed public land and resource conservation, rehabilitation, and improvement projects;

(4) provide for implementation of the program in such manner as will foster conservation and the wise use of natural and cultural resources through the establishment of

working relationships among the Federal, State, and local governments, Indian tribes, and other public and private organizations; and

(5) increase (by training and other means) employment opportunities for young men and women including, but not limited to, those who are economically, socially, physically, or educationally disadvantaged and who may not otherwise be productively employed.

SEC. *03. DEFINITIONS.

For purposes of this subtitle:

(1) The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by any agency or instrumentality of a State or local government.

(2) The term "program" means all activities carried out under the American Conservation Corps established by this subtitle.

(3) The term "program agency" means any agency designated by the Governor to manage the program in that State, and the governing body of any Indian tribe.

(4) The term "Indian tribe" means any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes which is subject to restrictions on alienation imposed by the United States.

(7) The term "employment security service" means the agency in each of the several States with responsibility for the administration of unemployment and employment programs, and the oversight of local labor conditions.

(8) The term "chief administrator" means the head of any program agency as that term is defined in paragraph (3).

(9) The term "enrollee" means any individual enrolled in the American Conservation Corps in accordance with section *05.

(10) The term "crew leader" means an enrollee appointed under authority of this subtitle for the purpose of supervising other enrollees engaged in work projects pursuant to this subtitle.

(11) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) The term "economically disadvantaged" with respect to youths has the same meaning given such term in section 4(8) of the Job Training Partnership Act.

SEC. *04. AMERICAN CONSERVATION CORPS PROGRAM.

(a) ESTABLISHMENT OF AMERICAN CONSERVATION CORPS.—There is hereby established an American Conservation Corps.

(b) REGULATIONS AND ASSISTANCE.—Not later than 120 days after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture, after consultation with the Secretary of Labor, shall jointly promulgate the regulations necessary to implement the American Conservation Corps established by this subtitle. Within 30 days after the enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture shall establish procedures to give program agencies and other interested parties, including the public, adequate notice and opportunity to comment upon and participate in the formulation of such regulations. The regulations shall include provisions to assure uniform reporting on the activities and accomplishments of American Conservation Corps programs, demographic characteristics of enrollees in the American Conservation Corps, and such other information as may be necessary to prepare the annual report under section *10.

(c) PROJECTS INCLUDED.—The American Conservation Corps established under this section may carry out such projects as—

(1) conservation, rehabilitation, and improvement of wildlife habitat, rangelands, parks, and recreational areas;

(2) urban revitalization and historical and cultural site preservation;

(3) fish culture and habitat maintenance and improvement and other fishery assistance;

(4) road and trail maintenance and improvement;

(5)(A) erosion, flood, drought, and storm damage assistance and controls,

(B) stream, lake, and waterfront harbor and port improvement, and

(C) wetlands protection and pollution control;

(6) insect, disease, rodent, and fire prevention and control;

(7) improvement of abandoned railroad bed and right-of-way;

(8) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(9) reclamation and improvement of strip-mined land; and

(10) forestry, nursery, and silvicultural operations.

(d) PREFERENCE FOR CERTAIN PROJECTS.—The program shall provide a preference for those projects which—

(1) will provide long-term benefits to the public;

(2) will instill in the enrollee involved a work ethic and a sense of public service;

(3) will be labor intensive; and

(4) can be planned and initiated promptly.

(e) LIMITATION TO PUBLIC LANDS.—Projects to be carried out by the American Conservation Corps shall be limited to projects on public lands or Indian lands except where a project involving other lands will provide a documented public benefit as determined by the Secretary of the Interior or the Secretary of Agriculture. The regulations promulgated under subsection (b) shall establish the criteria necessary to make such determinations.

(f) CONSISTENCY.—All projects carried out under this subtitle for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with the provisions of law and policies relating to the management and administration of such lands, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of the area.

(g) APPLICATION PROCEDURES.—(1) Each program agency may apply for approval to participate in the American Conservation Corps under this subtitle.

(2) Applications for participation in the American Conservation Corps on Federal public lands shall be submitted to the Secretary of the Interior or the Secretary of Agriculture in such manner as is provided for by the regulations promulgated under subsection (b). Applications for participation in the American Conservation Corps on non-Federal public lands or Indian lands shall be submitted to the Secretary of the Interior. Applications for participation in the American Conservation Corps on projects on lands described in subsection (e) shall be submitted to the Secretary of Agriculture or the Secretary of the Interior as the case may be. No application may be submitted to the Secretary of the Interior or the Secretary of Agriculture before the 30-day period for review and comment by the appropriate State Job Training Coordinating Council (established under the Job Training Partnership Act), if any, which shall consult with the appropriate Private Industry Council, or Councils, in the area in which a project is carried out. Comments of the State Job Training Coordinating Council and Private Industry Council shall be forwarded to the Secretary at the time the grant application is submitted.

(3) Each application under this section must be approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, and shall contain—

(A) a comprehensive description of the objectives and performance goals for the program, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided;

(B) a plan to make arrangements for certification of the training skills acquired by enrollees and award of academic credit to enrollees for competencies developed from training programs or work experience obtained under this subtitle;

(C) an estimate of the number of enrollees and crew leaders necessary for the proposed projects, the length of time for which the services of such personnel will be required, and the services which will be required for their support;

(D) a description of the location and types of facilities and equipment to be used in carrying out the programs; and

(E) such other information as the Secretary of the Interior and the Secretary of Agriculture shall prescribe.

(4) In approving the location and type of any facility to be used in carrying out the program, the Secretary of the Interior and the Secretary of Agriculture shall give due consideration to—

(A) the proximity of any such facility to the work to be done;

(B) the cost and means of transportation available between any such facility and the homes of the enrollees who may be assigned to that facility;

(C) the participation of economically, socially, physically, or educationally disadvantaged youths; and

(D) the cost of establishing, maintaining, and staffing the facility.

Every effort shall be made to assign youths to facilities. as near to their homes as practicable.

(5)(A) Every program shall have sufficient supervisory staff appointed by the chief administrator which may include enrollees who have displayed exceptional leadership qualities.

(B) No project shall be undertaken without the on-site presence of knowledgeable and competent supervision, and all projects undertaken shall be documented in advance in an approved written project plan.

(h) LOCAL PARTICIPATION.—Any State carrying out a program under this subtitle shall provide a mechanism under which local governments and nonprofit organizations within the State may be approved by the State to participate in the American Conservation Corps.

(i) AGREEMENTS.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(j) JOINT PROJECTS.—

(1) DEPARTMENT OF LABOR.—The Secretary of the Interior and the Secretary of Agriculture are authorized to develop jointly with the Secretary of Labor regulations designed to allow, where appropriate, joint projects in which activities supported by funds authorized under this subtitle are coordinated with activities supported by funds authorized under employment and training statutes administered by the Department of Labor (including the Job Training Partnership Act). Such regulations shall provide standards for approval of joint projects which meet both the purposes of this subtitle and the purposes of such employment and training statutes under which funds are available to support the activities proposed for approval. Such regulations shall also establish a single mechanism for approval of joint projects developed at the State or local level.

(2) DEPARTMENT OF DEFENSE.—The Secretary of the Interior, the Secretary of Agriculture, and program agencies may enter into agreements, jointly or separately, with the Secretary of Defense to assist the military by carrying out projects under this subtitle. Such projects may be carried out on a reimbursable basis or otherwise.

SEC. *05. ENROLLMENT, FUNDING, AND MANAGEMENT.

(a) ENROLLMENT IN PROGRAM.—(1)(A) Enrollment in the American Conservation Corps shall be limited to individuals who, at the time of enrollment, are—

(i) unemployed;

(ii) not less than 16 years or more than 25 years of age (except that programs limited to the months of June, July, and August may include individuals not less than 15 years and not more than 21 years of age at the time of their enrollment); and

(iii) citizens or nationals of the United States (including those citizens of the Northern Mariana Islands as defined in Public Law 98-213 (97 Stat. 1459)) or lawful permanent residents of the United States.

(B) Special efforts shall be made to recruit and enroll individuals who, at the time of enrollment, are economically disadvantaged.

(C) In addition to recruitment enrollment efforts required in subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall make special efforts to recruit enrollees who are socially, physically, and educationally disadvantaged youths.

(D) Notwithstanding subparagraph (A), a limited number of special corps members may be enrolled without regard to their age so that the corps may draw upon their special skills which may contribute to the attainment of the purposes of the subtitle.

(2) Except in the case of a program limited to the months of June, July, and August, individuals who at the time of applying for enrollment have attained 16 years of age but not attained 19 years of age, and who are no longer enrolled in any secondary school shall not be enrolled unless they give adequate written assurances, under criteria to be established by the Secretary of the Interior and the Secretary of Agriculture, that they did not leave school for the express purpose of enrolling. The regulations promulgated under section *04(b) shall provide such criteria.

(3) The selection of enrollees to serve in the American Conservation Corps shall be the responsibility of the chief administrator of the program agency. Enrollees shall be selected from those qualified persons who have applied to, or been recruited by, the program agency, a State employment security service, a local school district with an employment referral service, an administrative entity under the Job Training Partnership Act, a community or community-based nonprofit organization, the sponsor of an Indian program, or the sponsor of a migrant or seasonal farmworker program.

(4)(A) Except for a program limited to the months of June, July, and August, any qualified individual selected for enrollment may be enrolled for a period not to exceed 24 months. When the term of enrollment does not consist of one continuous 24-month term, the total of shorter terms may not exceed 24 months.

(B) No individual may remain enrolled in the American Conservation Corps after that individual has attained the age of 26 years, except as provided in subsection (a)(1)(D) of this section.

(5) Within the American Conservation Corps the directors of programs shall establish and stringently enforce standards of conduct to promote proper moral and disciplinary conditions. Enrollees who violate these standards shall be transferred to other locations, or dismissed, if it is determined that their retention in that particular program, or in the Corps, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees. Such disciplinary measures will be subject to expeditious appeal to the appropriate Secretary.

(b) SERVICES, FACILITIES, SUPPLIES.—The program agency shall provide facilities, quarters, and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, and other appropriate services, supplies, and equipment. The Secretary of the Interior and the Secretary of Agriculture may provide services, facilities, supplies, and equipment to any program agency carrying out projects under this subtitle. Whenever possible, the Secretary of the Interior and the Secretary of Agriculture shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment. Basic standards of work requirements, health, nutrition, sanitation, and safety for all projects shall be established and enforced.

(c) REQUIREMENT OF PAYMENT FOR CERTAIN SERVICES.—Enrollees shall be required to pay a reasonable portion of the cost of room and board provided at residential facilities into rollover funds administered by the appropriate program agency. Such payments and rates are to be established after evaluation of costs of providing the services. The rollover funds established pursuant to this section shall be used solely to defray the costs of room and board for enrollees. The Secretary of the Interior and the Secretary of Agriculture and the Secretary of Defense are authorized to make available to program agencies surplus food and equipment as may be available from Federal programs.

SEC. *06. FEDERAL AND STATE EMPLOYEE STATUS.

Enrollees, crew leaders, and volunteers are deemed as being responsible to, or the responsibility of, the program agency administering the project on which they work. Except as otherwise specifically provided in the following paragraphs, enrollees and crew leaders in projects for which funds have been authorized pursuant to section *13 shall not be deemed Federal employees and should not be subject to the provisions of law relating to Federal employment:

(1) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, enrollees and crew leaders serving American Conservation Corps program agencies shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty" shall not include any act of an enrollee or crew leader while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee's or crew leader's employment is terminated.

(2) For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, enrollees and crew leaders on American Conservation Corps projects shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code.

(3) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, enrollees and crew leaders shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section.

SEC. *07. USE OF VOLUNTEERS.

Where any program agency has authority to use volunteer services in carrying out functions of the agency, such agency may use volunteer services for purposes of assisting projects carried out under this subtitle and may expend funds made available for those purposes to the agency, including funds made available under this subtitle, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision. The use of volunteer services permitted by this section shall be subject to the condition that such use does not result in the displacement of any enrollee.

SEC. *08. TENNESSEE VALLEY AUTHORITY.

The Board of Directors of the Tennessee Valley Authority may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Tennessee Valley Authority except policymaking or law or regulatory enforcement. Such volunteers shall not be deemed employees of the United States Government except for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work injuries, and shall not be deemed employees of the Tennessee Valley Authority except for the purposes of

tort claims to the same extent as a regular employee of the Tennessee Valley Authority would be under identical circumstances.

SEC. *09. SPECIAL RESPONSIBILITIES.

(a) PAY.—(1) The rate of pay for enrollees shall be the equivalent of 95 percent of the pay rate for members of the Armed Forces in the enlisted grade E-1 who have served for four months or more on active duty, from which a reasonable charge for enrollee room and board shall be deducted by the program agency.

(2) Enrollees shall receive $50 cash incentive stipends for every three months of enrollment in the program.

(3) The rate of pay for crew leaders shall be at a wage comparable to the compensation in effect for grades GS-3 to GS-7.

(b) COORDINATION.—The Secretary of the Interior and the Secretary of Agriculture and the chief administrators of program agencies carrying out programs under this subtitle shall coordinate the programs with related Federal, State, local, and private activities.

(c) CERTIFICATION AND ACADEMIC CREDIT.—Pursuant to the provisions of paragraphs (B) and (C) of section *04(g)(3), the Secretary of the Interior and the Secretary of Agriculture shall provide guidance and assistance to program agencies in securing certification of training skills or academic credit for competencies developed under this subtitle.

(d) RESEARCH AND EVALUATION.—The Secretary of the Interior shall provide for research and evaluation to—

(1) determine costs and benefits, tangible and otherwise, of work performed under this subtitle and of training and employable skills and other benefits gained by enrollees, and

(2) identify options for improving program productivity and youth benefits, which may include alternatives for—

(A) organization, subjects, sponsorship, and funding of work projects;

(B) recruitment and personnel policies;

(C) siting and functions of facilities;

(D) work and training regimes for youth of various origins and needs; and

(E) cooperative arrangements with programs, persons, and institutions not covered under this subtitle.

(e) CCC SITES.—The Secretary of the Interior, after consultation with the Secretary of Agriculture, shall study sites at which Civilian Conservation Corps activities were undertaken for purposes of determining a suitable location and means to commemorate the Civilian Conservation Corps. Not later than one year after the date of the enactment of this subtitle, the Secretary of the Interior shall submit a report to the Congress containing the results of the study carried out under this section. The report shall include cost estimates and recommendations for any legislative action.

(f) STUDY.—(1) Program agencies shall not use more than 10 percent of the funds available to them to provide training and educational materials and services for enrollees and may enter into arrangements with academic institutions or education providers, including local education agencies, community colleges, four-year colleges, area vocational-technical schools and community based organizations, for academic study by enrollees during nonworking hours to upgrade literacy skills, obtain a high school diploma or its equivalency, or college degrees, or enhance employable skills. Enrollees who have not obtained a high school diploma or its equivalency shall have priority to receive services under this subsection. Whenever possible, an enrollee seeking study or training not provided at his or her assigned facility shall be offered assignment to a facility providing such study or training.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under paragraph (1) shall be consistent with the requirement of applicable State and local law and regulations.

(g) GUIDANCE AND PLACEMENT.—Program agencies shall provide such job guidance and placement information and assistance for enrollees as may be necessary. Such assistance shall be provided in coordination with appropriate State, local, and private agencies and organizations.

SEC. *10. ANNUAL REPORT.

The Secretary of the Interior and the Secretary of Agriculture shall prepare and submit to the President and to the Congress at least once each year a report detailing the activities carried out under this subtitle in the preceding fiscal year. Such report shall be submitted not later than December 31 of each year following the date of enactment of this subtitle.

SEC. *11. LABOR MARKET INFORMATION.

The Secretary of Labor shall make available to the Secretary of the Interior and the Secretary of Agriculture and to any program agency under this subtitle such labor market information as is appropriate for use in carrying out the purposes of this subtitle.

SEC. *12. EMPLOYEE APPEAL RIGHTS.

(a) FEDERAL EMPLOYEES.—In the case of—

(1) the displacement of a Federal employee (including any partial displacement through reduction of nonovertime hours, wages, or employment benefits) or the failure to reemploy an employee in a layoff status, contrary to a certification under section *13(c) (1) or (2), or

(2) the displacement of such a Federal employee by reason of the use of one or more volunteers under section *07 of this subtitle,

such employee is entitled to appeal such action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) OTHER INDIVIDUALS.—In the case of—

(1) the displacement of any other individual employed (either directly or under contract with any private contractor) by a program agency or grantee, or the failure to reemploy an employee in layoff status, contrary to a certification under section *13(c) (1) or (2), or

(2) the displacement of such individual by reason of the use of one or more volunteers under section *07 of this subtitle,

the requirements contained in section 144 of the Job Training Partnership Act (Public Law 97-300) shall apply, and such individual shall be deemed an interested person for purposes of the application of such requirements.

(c) DEFINITION.—For purposes of this section, the term "displacement" includes, but is not limited to, any partial displacement through reduction of nonovertime hours, wages, or employment benefits.

SEC. *13. AUTHORIZATION OF APPROPRIATIONS.

(a) DISTRIBUTION OF FUNDS.—Of the sums appropriated pursuant to subsection (g) to carry out this subtitle for any fiscal year—

(1) not less than 50 percent shall be made available to the Secretary of the Interior for expenditure by State program agencies which have been approved by the Secretary of the Interior for participation in the American Conservation Corps;

(2) not less than 15 percent shall be made available to the Secretary of Agriculture for expenditure by agencies within the Department of Agriculture, subject to the provisions of subsection (e);

(3) not less than 5 percent shall be made available to the Secretary of Agriculture, under such terms as are provided for in regulations promulgated under section *04(b), for expenditure by other Federal agencies;

(4) not less than 25 percent shall be made available to the Secretary of the Interior for expenditure by agencies within the Department of the Interior, subject to the provisions of subsection (e), and for demonstration projects or projects of special merit carried out by any program agency or by any nonprofit organization or local government which is undertaking or proposing to undertake projects consistent with the purposes of this subtitle;

(5) not less than 5 percent shall be made available to the Secretary of the Interior for expenditure by the governing bodies of participating Indian tribes.

(b) AWARD OF GRANTS.—Within 60 days after enactment of appropriations legislation pursuant to subsection (g), any program agency may apply to the Secretary of the Interior for funds under this subtitle. In determining the allocation of funds among the program agencies, the Secretary shall consider each of the following factors:

(1) The proportion of the unemployed youth population of the State.

(2) The the conservation, rehabilitation, and improvement needs on public lands within the State.

(3) The amount of other support for the program and the extent to which the size and effectiveness of a program will be enhanced by the use of the Federal funds.

Any State receiving funds for the operation of any program under this subtitle shall be required to provide not less than 50 percent of the cost of such program.

(c) NON-DISPLACEMENT.—The Secretary of the Interior and the Secretary of Agriculture shall not fund any program or enter into any agreement with any program agency for the funding of any program under this subtitle unless the Secretary concerned or such agency certifies that projects carried out by the program will not—

(1) result in the displacement of individuals currently employed (either directly or under contract with any private contractor) by the program agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the program agency concerned;

(3) impair existing contracts for services; or

(4) result in the inability of persons who normally contract with the agency for carrying out projects involving forestry, nursery, or silvicultural operations on commercial forest land to continue to obtain contracts to carry out such projects.

For purposes of paragraph (4), the term "commercial forest land" means land in the National Forest System or land administered by the Secretary of the Interior through the Bureau of Land Management which is producing, or is capable of producing, 50 cubic feet per acre per year of industrial wood and which is not withdrawn from

timber utilization by statute or administrative decision.

(d) STATE SHARE TO LOCAL GOVERNMENTS.—If, at the commencement of any fiscal year, any State does not have a program agency designated by the Governor to manage the program in that State, then during such fiscal year any local government within such State may establish a program agency to carry out the program within the political subdivision which is under the jurisdiction of such local government. Such local government program agency shall be in all respects subject to the same requirements as a State program agency. Where more than one local government within a State has established a program agency under this subsection, the Secretary of the Interior shall allocate funds between such agencies in such manner as he deems equitable.

(e) PROGRAMS ON FEDERAL LANDS.—Funds provided under this section to any Federal agency shall be used to carry out projects on Federal lands and to provide for the Federal administrative costs of implementing this subtitle. In utilizing such funds, the Federal agencies may enter into contracts or other agreements with program agencies and with local governments and nonprofit organizations approved under section *04(h).

(f) PAYMENT TERMS.—Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary of the Interior or the Secretary of Agriculture, as appropriate, finds necessary.

(g) USE OF FUNDS.—Contract authority under this subtitle shall be subject to the availability of appropriations. Funds provided under this subtitle shall only be used for activities which are in addition to those which would otherwise be carried out in the area in the absence of such funds. Not more than 10 percent of the funds made available to any program agency for projects during each fiscal year may be used for the purchase of major capital equipment.

(h) ADMINISTRATIVE EXPENSES.—The regulations under section *04(b) shall establish appropriate limitations on the administrative expenses of Federal agencies and program agencies carrying out programs under this subtitle. Such limitations shall insure that administrative expenses of such programs shall be minimized to the extent practicable taking into consideration the purposes of this subtitle and the nature of the programs carried out under this subtitle.

(i) APPROPRIATION LEVELS.—There is authorized to be appropriated for the purposes of carrying out this subtitle $75,000,000 for each of the fiscal years 1987 through 1989. Funds appropriated under this subtitle shall remain available until expended.

DOMENICI AMENDMENT NO. 3080

Mr. DOMENICI proposed an amendment to the bill, H.R. 5485, supra, as follows:

In section 1152(a) of the bill, strike paragraph (1) and redesignate the subsequent paragraphs appropriately.

In paragraph (9)(B) of section 524(c) of title 28, United States Code, as added by section 1152(a)(6) of the bill, insert "in such amounts as are specified in appropriation Acts," after "disbursed,".

In section 1152(b)(1) of the bill, strike subparagraph (A) and redesignate the subsequent subparagraphs appropriately.

Strike subsection (c) of section 1152 of the bill.

In section 981(e) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except section 3 of the Anti Drug Abuse of 1986," after "law,".

In section 981(i)(1) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except section 3 of the Anti Drug Abuse Act of 1986," after "law,".

In paragraph (2)(A) of section 511(e) of the Controlled Substances Act (42 U.S.C. 881(e)), as added by section 1772 of the bill, insert ", to the extent provided in appropriation Acts," after "title shall".

CHILES AMENDMENT NO. 3081

Mr. CHILES proposed an amendment to the bill (H.R. 5484), supra; as follows:

Strike everything beginning on page 79, line 4 through and including line 13 on page 80 and insert in lieu thereof the following:

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration $11,000,000; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center.

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $78,000,000, of which $50,000,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $2,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $6,000,000.

(i) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts contained in H.R. 5161, as reported to the Senate by the Committee on Appropriations on September 3, 1986.

COMPENSATION AND ESTABLISHING LIABILITY FOR OIL SPILLS

MITCHELL AMENDMENT NO. 3082

Mr. MITCHELL proposed an amendment to the bill (S. 2799) to consolidate and improve Federal laws providing compensation and establishing liability for oil spills; as follows:

On page 42, line 19, section 205 is amended to read as follows:

"SEC. 205. Title III, other than section 302, of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed."

ADDITIONAL STATEMENTS

TAKING THE PRESIDENCY TO THE PEOPLE

● Mr. HATFIELD. I would like to draw attention to an article authored by the Acting Archivist of the United States, Dr. Frank Burke, describing the Presidential library system. The article, entitled "Taking the Presidency to the People," appears in the summer issue of Prologue, the magazine of the National Archives and Records Administration. It deserves attention because of its excellent statement of the fact that Presidential libraries are not simply memorials to former Chief Executives. Rather, they are rich storehouses of information benefiting scholars and laypersons who seek to understand the Presidency, our system of Government and the process of our international relations.

These libraries have been the focus of criticism from some quarters. Yet such criticism fails to understand that libraries, in general, are stones in the foundation of a democracy, that at the base of a free society is the access to knowledge provided in libraries and that Presidential libraries are a part of these great institutions of democracy. Besides the material contained in each one, the Presidential libraries promote seminars, plan exhibits, and public programs, and encourage intellectual pursuits by the public and scholars which benefit everyone. I strongly urge the continued support, development, and maintenance of the Presidential library system where the past, which is prologue, is housed.

I commend the Acting Archivist for highlighting the importance that these institutions play, and ask that the article be printed in the RECORD.

The article follows:

TAKING THE PRESIDENCY TO THE PEOPLE

(By Frank G. Burke)

Over the years, criticism of the presidential library system has grown as the number of libraries has increased. The libraries are sometimes characterized as "paper pyramids" by their detractors, and their operating budgets are rarely differentiated from the costs of Secret Service protection, secre-

tarial and postage allowances, and other benefits that directly relate to former presidents and their families.

These simplifications do a sad disservice to our former chief executives and the American public. The presidential library system was *never* intended to benefit retired presidents directly. Modeled upon the library set up by President Franklin D. Roosevelt in 1939, the system was officially established by Congress in 1955. Since then the seven (soon to be eight) libraries have evolved into rich research institutions that serve not only scholars and students but, equally as important, the communities around them.

Among the least examined but most beneficial aspects of these libraries are the contributions they receive from and return to the cities and states they serve. The involvement of local citizens in Boston and Austin in the volunteer tour programs of the Kennedy and Johnson libraries, for example, is a boon to visitors as well as an enriching service to the community. The residents of Independence, Missouri, and nearby Kansas City have heard countless distinguished historians, soldiers, and former cabinet members discuss public policy during the Truman years. Conferences and lectures of national importance—many of them led by President Ford—have been held at the Ford Library in Ann Arbor and the Ford Museum in Grant Rapids, Michigan.

In addition to sponsoring hundreds of conferences, exhibitions, and public programs, the presidential libraries work with local educators and civic groups to encourage the use of original records in the study of the presidency and national policy. The Kennedy Library, for example, has helped teachers develop materials drawn from library holdings for classroom use. These have been used in schools throughout the country. The Eisenhower Library has held a series of workshops for students from the Topeka schools. The Hoover, Roosevelt, and Truman libraries have worked with local public schools to develop programs for elementary, junior high, and high school students to use the resources there in teaching American history and government and international relations.

Presidential libraries also encourage schools to use their museums as educational resources. The Johnson Library in Austin has developed educational games to assist in interpreting exhibitions and has developed special tours for the blind and handicapped. At the Carter Library, which will open this fall in Atlanta, visitors can touch a computer monitor linked to a television screen to choose one of more than one hundred questions to be posed to the former president in a simulated town meeting. An image of Mr. Carter will answer questions ranging from daily life in the White House to the Iranian hostage crisis. Last year nearly 1.5 million people visited the seven presidential museums.

The vitality that these libraries contribute to the intellectual life of the surrounding communities should not be overlooked. In an editorial last year, the *Kansas City Times* called the libraries "reservoirs of history, some remote from Washington, that are accessible to millions of Americans. For many, it is their only direct contact with their national history . . . the cost is reasonable for what America has gotten and will continue to get in return."

Information from presidential library holdings is available to every American. Writers and historians have based thousands of works on material from the libraries, including several that have won Pulitzer, Bancroft, and Parkman prizes. Historian Walter McDougall recently paid tribute to "the dedicated professionals" at the Truman, Eisenhower, Kennedy, and Johnson libraries in the foreward to his new book. He did extensive research in the records of these four institutions for *The Heavens and the Earth: A Political History of the Space Age,* for which he recently won a Pulitzer Prize. More than five hundred books have been based on the holdings of the Roosevelt Library in Hyde Park alone.

Regardless of these benefits, the costs of operating and maintaining these libraries continue to cause concern. Although the libraries are built with private funds, inflation continues to add to the cost of their upkeep. In view of this concern, recent legislation passed by Congress requires that all future libraries built after President Reagan's be endowed with a fund equal to 20 percent of building, land, and equipment costs. This law also gives to the Archivist of the United States the authority to set standards to ensure efficient and appropriate design of all future libraries. It is hoped that this legislation will put to rest many of the concerns about "escalating costs" as the library system growns.

The White House creates a voluminous historical record. Manuscript holdings at presidential libraries of presidents and administration officials now exceed 200 million pages. Through acquisition of documents, books, and bibliographic information, each library serves as a research center for the study of the presidency and national and international affairs. Each has extensive audiovisual collections, oral history programs, and a wide range of gifts from private citizens and heads of state. These materials afford the scholar and citizen alike a comprehensive view of the presidency "with all the bark off," in Lyndon Johnson's words.

The presidential libraries, as part of the National Archives, have succeeded in making certain that presidential papers are opened for research as promptly as possible. Before their establishment, the papers of presidents often remained closed for long periods. Abraham Lincoln's papers, for example, were not opened for research until 1947, eighty-two years after his death; John Adams's remained closed for 153 years after he left the presidency. In contrast, the main body of Franklin D. Roosevelt's papers—85 percent of them—were opened to researchers in March 1950, less than five years after his death. The first portions of Lyndon Johnson's papers were made available in 1972, less than four years after he left office. This high degree of accessibility has set new standards that have been applauded by scholars and emulated by other achival institutions.

In the course of its history, the presidential libraries system has developed highly effective means of preserving permanently valuable presidential papers and related historical materials and making them available to scholars and the public at large. These programs have assured that "first-hand" information about public policy is deposited with the libraries by administration officials, and that these collections are readily accessible in many forms to the communities and researchers they serve. For scholars and citizens alike, the historical record in its entirety is the finest way to bring the presidency to the people.●

POSITIVE IMPACT OF 1985 FARM BILL ON INTERNATIONAL AGRICULTURE TRADE

● Mr. BOSCHWITZ. Mr. President, as a member of the Senate Committee on Agriculture, Nutrition, and Forestry it is gratifying to read of the positive impact the 1985 farm bill has made on international agriculture trade. Obviously, many of our trading partners do not view our legislation as a boon to the world market as it is aimed at improving the trade of U.S. agricultural commodities.

In an article published in the Sydney (Australia) Morning Herald on August 6, John Campbell, a Senate agriculture committee staff member currently completing post-graduate work at Sydney University, discusses the benefits of the farm bill in response to criticism of United States agricultural problems. Those of us who worked on the bill with John will remember him as a diligent worker and an exceptionally bright young man.

Clearly, the reaction of Australians to the new farm legislation reveals its role in making the United States more competitive in the marketplace.

I respectfully submit Mr. Campbell's article for the RECORD.

[From the Sidney Morning Herald, Aug. 16, 1986]

WHEAT: AUST'S FREE RIDE ENDS

The other day I rang Telecom information to get the telephone number of the US Agricultural Attaché. The operator, recognising my obvious American accent, said the US could take its agriculture "up on the next space shuttle".

There has always been room for more rational discussion of agricultural problems. The near-panic generated by US Congressional proposals to widen the American export subsidy program to include the Soviet Union and China makes it even more necessary to examine the reasons for this "crisis".

The problem is a combination of three fundamental facts. First, the world does not want to buy in international trade as much wheat as it did only a few years ago. Since the 1980–81 crop year, world wheat trade has been flat or falling and now stands at about 10 percent less than it did six years ago and 13.5 per cent less than it did only two years ago.

Second, production of wheat by exporting countries, on the whole, has not changed. Production in Australia and the EC has been rising over the past five years with offsetting production declines in the US and Argentina.

Third, only one country, the US, has had a deliberate policy of trying to reduce production and hold stocks off the market in an effort to keep prices as high as they were when demand was stronger.

It may seem like common sense that when consumers do not want to buy as much, but producers keep the same amount on the market, prices go down. I have used wheat as the example, but the same could be said of cotton, coarse grains and rice. Why then do farmers insist on various forms of government intervention to shield them from the realities of the market place?

Before the new US farm bill became law, American farmers had a vast network of subsidies all aimed at idling land and keeping stocks off the market so that prices would be kept high. Australian wheat farmers have, until 1984, had a scheme whereby domestic users paid a higher price for wheat than the world market price and taxpayers footed the bill if world market prices were not as high as the guaranteed minimum export price. The Australian wheat scheme only protects export prices and is expected to pay wheat farmers if prices drop because of the US subsidy plan.

European farmers have a system whereby domestic consumers pay a price vastly higher than the world price and all production in excess of domestic needs is dumped on the world market for whatever price it will bring.

Although all of the major wheat exporting nations have support schemes for wheat farmers, only the US is operating a scheme to reduce production and keep supplies off the market. The outcome has been that America has lost its share of a shrinking market while its competitors, including Australia, have gained. American wheat farmers listen grimly to US Department of Agriculture predictions that their wheat exports will fall 44 per cent from the 1983-84 crop, the largest year-to-year drop in exports ever recorded. Overall, since the peak export year of 1980-81, American wheat farmers have lost 40 per cent of their market share.

Meanwhile, Australian farmers during this period have been happily producing and exporting more and more as if nothing had changed in the world market place. In fact, the Australian Wheat Board recently predicted their third straight record export year on a volume basis. Australia's market share has risen from roughly 11 per cent in crop year 1980 to more than 17 per cent in crop year 1985—more than a 50 per cent increase. The European Community has also increased its market share in the face of falling world demand.

How could this happen? Most of the blame can be laid directly at the doorstep of past US farm policy. The rest can be blamed on exchange rate fluctuations and refusal by the EC to moderate their export dumping policies. As stated earlier, American farm policy has attempted unilaterally to alter supply and demand conditions. The result: US markets have been taken up (American farmers would say stolen) by Australia and others just below the US asking price.

The 1983 US payment-in-kind program is a good example. In that year, 32 million hectares were taken out of production—more than one and a half times the entire amount of Australian land in broadacre production. American farmers were compensated for idling this massive amount of land. Combined with a summer drought, production was reduced and prices were increased.

How did US competitors react? As could be expected with higher prices, they increased the area sowed to wheat by 26 million hectares, almost cancelling the impact of the US program.

Enter the new US farm bill. Seeing the error of past American farm policy, Congress moved decisively to reduce the price of American wheat, coarse grains, cotton, and rice, to limit the amount of land taken out of production in a year, and to close loopholes in farm programs which rewarded increased output when a farmer's acreage was reduced. To protect American farmers from bankruptcy because of these sharply lower prices, direct cash subsidies were kept fairly high, but not as high as in the past.

In addition to these direct income subsidies, American farmers were assured they would not be left on their own to fight unfair competition sponsored by foreign governments. The export subsidy program so much in the news today was an effort on the part of Congress to assure hard-pressed farmers that the Government was fighting for them against the European Community and other governments perceived to be predatory competitors.

Despite the possible negative consequences of the export subsidy program on third countries such as Australia, the 1985 farm bill has much to offer in the way of improving the environment for agricultural production and trade.

The 1985 farm bill will force American farmers to face the realities of the market place to a greater degree than has been the case in the past. Over the life of the bill, subsidies are being reduced. It will also end the free ride Australian and other competitors have used to increase their share of the world market at the expense of American farmers and taxpayers. The most efficient farmers and best marketing systems will have a better chance of finishing ahead.

Finally, by dramatically increasing the cost of European farm programs, it may even bring the EC to change its farm policy—something long sought by Australians as well as Americans.

In the long-term, the new farm legislation has the potential to bring more balance into international agricultural trade—something low-cost Australian farmers should applaud.

The reasons farmers are so successful in convincing governments of major industrialised countries to disrupt world markets is because they have political clout far beyond their numbers, and in most cases far beyond their economic importance.

Australians are basically correct in actively opposing an expansion of such subsidies. However, to do so on the basis that Australia is a free trader is dishonest. Although Australian agricultural products are probably produced and traded in a less protectionist environment than the US or the EEC, there are certainly numerous government programs set up to help farmers. These are nicely outlined in the April 15 Government White Paper on the Rural Economy. The dairy and egg industries are good examples of highly protected Australian agricultural industries. In addition, where the Australian votes are counted—in labour and industry—the Australian Government has over the years built one of the most protectionist societies in the world.

It is time industrialised nations demanded some accountability on the part of farmers and resisted the temptation to dish out political rewards for short-term gain. American farmers should not demand their markets back in one year after taking six to lose them. And Australian farmers should not mimic American farmers by demanding that their government shield them.●

THE URANIUM REVITALIZATION AND TAILINGS RECLAMATION ACT OF 1986

● Mr. WALLOP. Mr. President, I stand in support of S. 1004, the Uranium Revitalization and Tailings Reclamation Act of 1986. This bill will reestablish a viable domestic uranium industry, ensure a long-term supply of domestic uranium and enrichment capacity for this country's nuclear power program and establish a program to finance reclamation and remedial action at active uranium sites. S. 1004 will approve the Energy Department's utility services enrichment contracts and thereby recognize that these contracts reflect relevant criteria for providing the enrichment services. It provides relevant criteria for providing the enrichment services. It provides that the enrichment program's unrecovered costs incurred by DOE in providing services to commercial customers are established at $350 million. This bill also requires the President to submit to Congress within 1 year a report on alternative means of managing the enrichment enterprise. This bill is supported by the Uranium Producers of America, the Oil Chemical & Atomic Workers, the Edison Electric Institute, the American Mining Congress, the National Taxpayers Union, and the western uranium-producing States.

The domestic uranium industry is a vital factor to the U.S. energy independence and for energy security and national security reasons this country must not permit this energy source, slip away. This industry has been devastated by a variety of economic factors, policies of foreign governments, foreign export penalties, Federal regulatory requirements, cancellation of nuclear powerplants and Government uranium enrichment policies.

Under section 161(v) of the Atomic Energy Act, the Energy Department must maintain a viable domestic uranium industry. Section 161(v) specifically states:

> That the Commission, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States.

In September 1985, Energy Secretary Herrington declared the domestic uranium industry nonviable. Yet after years of prodding by Senator DOMENICI, myself, and Senator SIMPSON, the Energy Department has not taken any positive steps to assist the uranium industry to return to a viable status. S. 1004, of which I am a cosponsor will permit the domestic uranium industry to survive the difficult times it is facing today.

My State of Wyoming has been hard hit by mine closings and layoffs, as have the States of New Mexico, Colorado, Texas, and Washington. This comprehensive bill addresses the deep problems facing Wyoming's uranium industry and will go far toward getting Wyoming miners back to work. I urge passage of the bill and encourage the House of Representatives to act speedily on this legislation.●

ORDERS FOR MONDAY, SEPTEMBER 29, 1986

Mr. SIMPSON. Mr. President, we come to the conclusion of a long day. I recognize the Democratic leader; he and I started this action this morning about 7:30, and we both drew the short straw again I see.

RECESS UNTIL 11:30

After conferring with the Democratic leader, I ask unanimous consent once the Senate completes its business today it stand in recess until 11:30 a.m. on Monday, September 29, 1986.

RECOGNITION OF CERTAIN SENATORS

Following the recognition of the two leaders under the standing order, I ask unanimous consent that the following Senators be recognized for not to exceed 5 minutes each for special orders: Senator HAWKINS and Senator PROXMIRE.

ROUTINE MORNING BUSINESS

Following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 12:30 p.m. with Senators permitted to speak therein for not more than 5 minutes.

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

PROGRAM

Mr. SIMPSON. At 12:30 p.m. it will be the majority leader's intention to turn to House Joint Resolution 738, the continuing resolution.

Then, Mr. President, votes will occur during Monday's session, and hopefully an announcement will be made when the Senate convenes as to what time the first vote will occur on Monday. I believe Senator LAXALT and one other Senator from the other side have a scheduling problem.

□ 0220

EXTENDING THE U.S. TRUSTEE SYSTEM

Mr. SIMPSON. Mr. President, I send a bill to the desk on behalf of Senator THURMOND and ask for its immediate consideration.

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

The assistant legislative clerk read as follows:

A bill (S. 2888) to temporarily delay the repeal of the U.S. Trustee System.

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

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

Mr. THURMOND. Mr. President, the legislation before the Senate at this time would temporarily delay the repeal of the U.S. Trustee System, and is necessary because of the current status of the Senate-House conference on H.R. 5316, the bankruptcy bill.

Mr. President, I am pleased to report that last evening the Senate and House conferees came to an agreement on H.R. 5316. This legislation includes several important improvements in our Nation's bankruptcy system.

One of those improvements will make the U.S. Trustee System a 'nationwide, permanent program. The U.S. Trustee System was enacted as a pilot program in 1978 and, by most reports, has been a resounding success.

The legislation before the Senate is necessary because, under current law, the U.S. Trustee System will be automatically repealed on September 30, 1986—this coming Tuesday. It is very unlikely that the conference report on H.R. 5316 will be ready for House and Senate consideration before Tuesday. This bill will extend the sSystem until November 10, 1986, and provide time for Congress to act on H.R. 5316, and time for enrollment and presentment of the bill to the President.

I urge my colleagues to support this legislation to ensure the survival of this important program.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective immediately before September 30, 1986, section 408(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Statute 2687), is amended by striking out "September 30, 1986" and inserting in lieu thereof "November 10, 1986".

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 970, S. 2799, the Oil Pollution Liability and Compensation Act.

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

The assistant legislative clerk read as follows:

A bill (S. 2799) to consolidate and improve Federal laws providing compensation and establishing liability for oil spills.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics):

S. 2799

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 "Oil Pollution Liability and Compensation Act of 1986".

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

DEFINITIONS

SEC. 101. For the purposes of this Act—

(1) the terms "vessel", "public vessel", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility", and "barrel" shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "person", "navigable waters", *and* "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil;

(5) the term "claimant" means any person who presents a claim for compensation under this Act;

(6) the term "damages" means damages for economic loss or the loss of or injury to natural resources as specified in section 102(a) of this Act;

(7) the term "deepwater port facility" means an offshore facility which is or was licensed under the Deepwater Port Act of 1974;

(8) the term "discharge" means any emission, intentional or unintentional, into the environment, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(9) the term "environment" means the navigable waters, the waters of the contiguous zone, the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act, adjoining shorelines, and the ambient air above such waters and shorelines;

(10) the term "foreign offshore unit" means a structure or group of structures which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(11) the term "Fund" means the Oil Spill Compensation Fund, hereby established under this Act;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "lessee" means a person holding a leasehold interest in an oil or gas lease on submerged lands of the Outer Continental Shelf, granted or maintained under the Outer Continental Shelf Lands Act;

(14) the term "liable" or "liability" under this Act shall be construed to be the standard of liability which obtains under section 311 of the Clean Water Act;

(15) the term "mobile offshore drilling unit" means a vessel capable of use as an Outer Continental Shelf facility to drill for oil;

(16) the term "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone estblished by the Magnuson Fishery Conservation and Management Act), any State or local government, or any foreign government;

(17) the term "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(18) the term "Outer Continental Shelf facility" means an offshore facility which is located, in whole or in part, on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(19) the term "owner or operator" means—

(A) with respect to an Outer Continental Shelf facility other than a pipeline or mobile offshore drilling unit, the lessee or permittee of the area in which the facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the facility is located (where the holder is a different person than the lessee or permittee);

(B) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility, from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), the owner or operator of the unit, and such unit shall be deemed to be a tanker;

(C) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility—

(i) from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), to the extent removal costs or damages exceed the limitation specified in section 102(c)(1)(A), or

(ii) from which oil is discharged below the surface of the water (or which posed a substantial threat of such a discharge),

the *lessee or* permittee of the area in which the unit is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the unit is located (where the holder is a different person than the lessee or permittee);

(20) the term "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) the term "removal costs" means the costs of removal taken after a discharge of oil has occurred or where there was a substantial threat of a discharge of oil, to prevent, minimize, or mitigate oil pollution from that incident, including all costs of completing removal as determined under section 106(d);

(22) the term "tanker" means a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo; and

(23) the terms "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

LIABILITY

SEC. 102. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section, the owner or operator of a vessel or an onshore or offshore facility from which oil is discharged, or which posed the threat of a discharge which causes the incurrence of removal costs, shall be liable for—

(1)(A) all removal costs incurred by the United States Government or a State under subsection (c), (d), (e), (f)(4), or (l) of section 311 of the Clean Water Act or under the Intervention on the High Seas or section 18 of the Deepwater Port Act of 1974; and

(B) any removal costs incurred by any person, including, but not limited to, any State; and

(2) all damages or economic loss or loss of natural resources resulting from such a discharge, including—

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use, including loss of subsistence use, of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources; and

(F) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b)(1) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the discharge or threat of discharge of oil and the damages resulting therefrom were caused solely by—

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) the defendant exercised due care with respect to the oil concerned, taking into consideration the characteristics of such oil, in light of all relevant facts and circumstances, and (ii) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of the foregoing paragraphs.

(2) In any case where the owner or operator of a vessel or an onshore or offshore facility can establish by a preponderance of the evidence that a discharge and the damages resulting therefrom were caused solely by an act or omission of a third party in accordance with paragraph (1)(C) (or solely by such an act or omission in combination with an act of God or an act of war), such third party shall be liable under this section as if such third party were the owner or operator of a vessel or onshore or offshore facility from which the discharge actually occurred. Where the owner or operator of a tanker or an onshore or offshore facility which handles or stores oil in bulk or commercial quantities, from which oil is discharged, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall promptly pay to the United States Government, and any other claimant, the costs of removal or damages claimed and shall be entitled by subrogation to all rights of the United States Government or other claimant to recover such costs of removal or damages from such third party under this subsection.

(c)(1) The liability of an owner or operator of a vessel or an onshore or offshore facility for damages and removal costs under this section for each discharge or incident shall not exceed—

(A) **[**$420**]** *$500* per gross ton or $10,000,000, whichever is greater, of any tanker carrying oil in bulk or in commercial quantities as cargo, including any such barge operating in the navigable waters;

(B) $300 per gross ton or $500,000, whichever is greater, of any other vessel;

(C) the total of all removal costs under subsection (a)(1) of this section plus $75,000,000 for any Outer Continental Shelf facility;

(D) $100,000,000 for any deepwater port facility (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $100,000,000 exceeds **[**$420**]** *$500* per gross ton of such vessel); or

(E) $100,000,000 for any other onshore or offshore facility.

The liability of an owner or operator under this section for interest (including prejudgment interest) shall not be subject to the limitations of this paragraph.

(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel or an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs not offset by any removal costs incurred on behalf of such owner or operator, if (A) the discharge of oil was the result of willful misconduct or gross negligence within the privity or knowledge of the owner or operator or of a violation (within the privity or knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations; or (B) the owner or operator fails or refuses to *report the discharge where required by law or to* provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities or to provide removal action upon order of a responsible official. *For the*

purpose of this paragraph, applicable standards or regulations with respect to a vessel shall be those adopted or promulgated by a Federal agency.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the defenses of subsection (b) of this section, all removal costs incurred by the United States Government or any State of local official or agency in connection with a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4)(A) The President is authorized to establish by regulation, with respect to any class or category of onshore or offshore facility subject to paragraph (1)(D) or (E) of this subsection, a maximum limit of liability under this section of less than $100,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(B) The President shall, by regulation, not less often than every three years, adjust the limits of liability specified in paragraph (1) of this subsection to reflect significant increases in the Consumer Price Index.

(d)(1) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be (A) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States, and (B) to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State, and (C) where subsection (e) of this section applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such government. The President, or the authorized representative of any State or of the foreign government, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subsection (a)(2)(C) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same discharge and natural resource.

(2)(A) The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials discretion, assess damages for those natural resources under the State's trusteeship.

(B) The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act for those natural resources under their trusteeship.

(C) Any determination or assessment of damages to natural resources for the purposes of this Act made by a Federal or State trustee in accordance with the regulations promulgated under [section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act] *paragraph (3) of this subsection* shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(3)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator of the Environmental Protection Agency, the Director of the Fish and Wildlife Service, and the heads of other affected agencies, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil for the purpose of this Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or units of affected areas, where damages equal the costs of restoration, replacement, or acquisition of equivalent resources, plus demonstrated additional lost use value or other damages beyond such costs, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss, and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(e)(1) Except where title III of this Act applies, the recovery of removal costs and damages by (A) persons residing in a foreign country, (B) the government of a foreign country, or (C) any agency or political subdivision of a foreign country, under this Act, shall be exclusively in accordance with this subsection.

(2) A claimant under this subsection must demonstrate that the claimant has not been otherwise compensated for incurred removal costs or damages. Except with respect to paragraph (3)(D) of this subsection, a claimant under this subsection must demonstrate (A) that recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or (B) that the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(3) Where a discharge, or substantial threat of a discharge of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country occurs, claims for removal costs and damages may be made under this subsection if the removal costs or damages resulted from a discharge of, or substantial threat of a discharge, of oil from—

(A) an Outer Continental Shelf facility or a deepwater port facility,

(B) a vessel occurring in the navigable waters of the United States,

(C) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States; or

(D) a tanker that received oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act for transportation to a port in the United States, the discharge or threat having occurred prior to delivery to that port.

(4) This subsection shall apply only in the case of discharges of oil occurring after the enactment of this Act.

(f)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or onshore or offshore facility or from any person who may be liable for a discharge or threat of discharge under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this Act, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(g) The owner or operator of a vessel shall be liable in accordance with this section, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and section 311 of the Clean Water Act, under maritime tort law, and as provided in section 106 of this Act, notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183), or the absence of any physical damage to the proprietary interest of the claimant.

USES OF FUND

SEC. 103. (a) The President shall use the money in the Fund for the following purposes:

(1) all removal costs or other costs of carrying out the purposes of subsections (c), (d), (i), and (l) of section 311 of the Clean Water Act, sections 5 and 7 of the Intervention on the High Seas Act, and section 18 of the Deepwater Port Act, with respect to discharges, [or] *of* substantial threats of discharges, or oil (as the term "oil" is defined in each respective Act);

(2) payment of any claim for removal costs or damages—

(A) in excess of the amount for which the owner or operator of the vessel or onshore or offshore facility from which oil is discharged is liable under section 102 of this Act;

(B) where the source of the discharge of oil is not known or cannot be identified;

(C) in any case where the claim has not been satisfied in accordance with subsection (c) of this section; and

(D) subject to, but in excess of the combined compensation available under, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984;

(3) payment of any claim for removal costs and damages that have resulted from the discharge, or substantial threat of a discharge, of oil from a foreign offshore unit;

(4)(A) payment of costs incurred by any State in responding to a discharge, or substantial threat of a discharge, of oil into the navigable waters or adjoining shorelines

from a vessel, an onshore facility, an offshore facility, or a foreign offshore unit, as provided in subsection (d) of this section;

(B) reimbursement to any State for the payment of any claims for removal costs or damages payable under this Act which such State has paid with funds under the control of such State, including payment pursuant to a delegation under subsection (c) of this section;

(5) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil;

(6) the costs of Federal or State efforts in the res-toration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil;

(7) payment of contributions to the International Fund as prescribed in section 305 of this Act;

(8) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams;

(9) the costs of a program to identify, investigate, and take enforcement and abatement action against discharges of oil, including the provisions of section 311(j)(1) (C) and (D) of the Clean Water Act; and

(10) all administrative and personnel costs of administering the Fund and this Act.

(b) The maximum amount which may be paid from the Fund with respect to any single discharge or incident, in combination with payment, if any, under the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984, shall not exceed $500,000,000.

(c)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil under this Act.

(B) Whenever the President receives information from any person alleging that a person has incurred removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil respecting which the owner or operator of a vessel or onshore or offshore facility is or may be liable under section 102 of this Act, the President shall notify the owner, operator, or guarantor or such vessel or facility of that allegation. Such owner or operator or guarantor may, within five days after receiving the notification or presentation of any claim by a claimant, deny the allegation, or deny liability for removal costs and damages for any of the reasons set forth in subsection (b) of section 102 of this Act.

(C) The owner or operator of any vessel or onshore or offshore facility from which oil has been discharged shall provide notice to all potentially injured parties.

(D) No claims may be asserted against the Fund pursuant to subsection (a) unless such claim is presented in the first instance to the owner or operator or guarantor of the vessel or onshore or offshore facility from which oil has been discharged, if known to the claimant, and to any other person known to the claimant who may be liable under section 102. In any case where the claim has not been satisfied within [sixty] *one hundred eighty* days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(d) The Governor of each State, or any appropriate State official designated by the Governor, is authorized to obligate the Fund for the payment of removal costs in an amount not to exceed $250,000 per discharge or substantial threat of discharge of oil, for the purpose of immediate response, subject only to the requirement that the President be notified within twenty-four hours of any such obligation under the authority of this sentence. In addition, the President shall enter into an agreement with the Governor of any interested State to provide a procedure by which the Governor or designated State official may undertake additional removal action or obligate the Fund for the additional payment of removal costs for response to a particular discharge or substantial threat of discharge, subject to such terms and conditions as may be agreed upon. Payments under subsection (a)(4)(A) of this section, other than as authorized by the first sentence of this subsection, shall be made in accordance with such agreements. *The President shall, not later than six months after the enactment of this Act, publish proposed regulations further establishing how the authority of this subsection to obligate the Fund or enter into agreements is to be exercised, and, not later than three months after the close of the comment period on such proposed regulations, shall promulgate such regulations.*

(e)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the removal costs or damages from the responsible party.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for costs or damages shall be subrogated to all rights, claims, and causes of action for those costs and damages that the claimant has under this Act or under any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to any limitation of liability with respect to an owner or operator under section 102(c), all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner or operator or *(subject to section 104(e))* guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. *Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.*

(f) The Fund shall not be available to pay any claim for costs or damages to the extent the discharge or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(g) The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of *the* Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h)(1) No claim may be presented under this section for recovery of removal costs after the date six years after the date of completion of all removal action.

(2) No claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which final regulations are promulgated under section [301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act.] *102(d)(3) of this Act.*

(3) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(i) Where the President has paid out of the Fund for any removal costs or any costs specified under subsection (a) (6) or (7), no other claim may be paid out of the Fund for the same costs.

(j) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

FINANCIAL RESPONSIBILITY

SEC. 104. (a)(1) The owner or operator of any vessel over three hundred gross tons

(except a non-self-propelled barge that does not carry oil as cargo or fuel), using any port or place in the United States or the navigable waters or any outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, *in the case of a tanker* the owner or operator could be subjected under section [102] *102(c)(1)(A)* of this Act, *or to which, in the case of any other vessel, the owner or operator could be subjected under section 102(c)(1)(B) of this Act,* in a case where the owner or operator would be entitled to limit liability under that section. If the owner or operator owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any outer continental shelf facility, and deepwater port facility, or any port or place in the United States, or (B) detain at such a facility or port or place, any vessel that, upon request, does not produce the certification required under this subsection or the regulations issued hereunder.

(4) Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any oil carried as cargo.

(b) Each owner or operator with respect to an outer continental shelf facility, deepwater port facility, or other offshore facility, shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the owner or operator could be subjected under section 102 of this Act in a case where the owner or operator would be entitled to limit liability under that section, *or, in the case of an Outer Continental Shelf facility, in the amount of $100,000,000.* Such evidence of financial responsibility shall be established according to regulations prescribed by the President.

(c) Financial responsibility under this section may be established by any one, or by any combination, of the following methods, which the President determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(d) Any claim for which liability may be established under section 102 of this Act may be asserted directly against any guarantor providing evidence of financial responsibility for an owner or operator liable under that section for costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under section 102. The guarantor may also invoke the defense that the discharge was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that might be available in proceedings brought by the owner or operator against the guarantor.

(e) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 102 for the purpose of satisfying the requirement for evidence of financial responsibility. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiation or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 102 of this Act or other applicable law.

(f)(1) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section or the regulations issued thereunder, or with a denial or detention order issued under subsection (a)(3) of this section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(2) In addition to, or in lieu of, assessing a penalty under paragraph (1) of this subsection, the President may request the Attorney General to secure such relief as necessary to compel compliance with this section, including, but not limited to, a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g) Any regulation respecting financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, shall be deemed and construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by new regulations issued under this section.

LITIGATION, JURISDICTION AND VENUE

SEC. 105. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in subsections (a) and (c) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act (which shall be deemed to include actions under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984), without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund and the International Fund, established under article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, shall reside in the District of Columbia.

(c) A State trial court of competent jurisdiction over similar claims may consider claims under section 102 or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of section 102, section 103, and title III of this Act.

(d) The provisions of subsections (a), (b), and (c) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, as provided by title IV of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(e) The President may prescribe the necessary regulations to carry out this Act and all obligations of the United States under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

(f) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge of oil, or any damages associated therewith, commenced prior to enactment of this Act.

(g)(1) Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which regulations are promulgated under section [301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act.] *102(d)(3) of this Act.*

(2) An [initial] action for recovery of removal costs referred to in section 102(a)(1) must be commenced within three years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. [A subsequent action or actions under section 102 for further remov-

al costs at the vessel or facility may be maintained at any time during the removal action, but must be commenced no later than three years after the date of completion of all removal action.] Except as otherwise provided in this paragraph, an action may be commenced under section 102 for recovery of removal costs at any time after such costs have been incurred.

(3) No action for contribution for any removal costs or damages may be commenced more than three years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than three years after the date of payment of such claim.

(5) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

STATE LAWS AND PROGRAMS

SEC. 106. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of oil or other pollution by oil within such State. Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to discharges of oil.

(b) Nothing in this Act or in section 9507 of the Internal Revenue [Act] *Code* of 1954 shall in any way affect, or be construed to affect, the authority of any State—

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

(c) A State may enforce, on the navigable waters of such State, the requirements for evidence of financial responsibility applicable under section 104 of this Act.

(d) The President shall consult with the affected State or States on the appropriate removal action to be taken. Removal with respect to any discharge or incident shall be considered completed when so determined by the President and the Governor or Governors of the affected State or States.

(e) Nothing in this Act, the Act of March 3, 1851, as amended (46 U.S.C. 183 et seq.), or section 9507 of the Internal Revenue [Act] *Code* of 1954, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) to impose additional liability or additional requirements, or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law,

relating to the discharge, or substantial threat of a discharge, of oil.

STUDY OF SPILL PREVENTION IN RESTRICTED WATERS

SEC. 107. The President shall conduct a study, and report the results of such study to the Congress not later than one year after the enactment of this Act, on improved methods for the prevention of discharges of oil in restricted waters and similar portions of bays, estuaries, and near shore waters. In the conduct of such study, the President shall examine the causes of recent major discharges of oil from vessels in the Delaware River, and consider modifications in tanker construction and operation standards, crew training and locale familiarization requirements, improvements in navigation aids, and other approaches with the potential for reducing the likelihood for discharges of oil in such waters.

TITLE II—CONFORMING AMENDMENTS

TRANS-ALASKA PIPELINE FUND

SEC. 201. (a) Section 204(b) of the Trans-Alaska Pipeline Authorization Act is amended, in the first sentence—

(1) by inserting after the words "any area" the words "in the State of Alaska";

(2) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline"; and

(3) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability and Compensation Act of 1986.".

(b) Section 204(c) of the Trans-Alaska Pipeline Authorization Act is repealed. This repeal shall not affect the applicability of that section to claims arising before the enactment of this Act. The repeal of paragraph (4), (5), and (8) of that provision shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under subsection (c) of this section and the rebate of all remaining amounts under, and the completion of all actions required to carry out, such subsection.

(c)(1) Not later than two hundred and ten days after the date of enactment of this Act, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the President the total amount of claims outstanding against that Fund as of the date of enactment of this Act. The amount of that Fund exceeding the total amount so certified shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(2) After the settlement of all claims described in paragraph (1) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in that Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(3) Whenever a rebate is made on a pro rata basis to the owners of oil under paragraph (1) or (2) of this subsection, each owner's share of the rebate shall be an amount determined by dividing the amount contributed by that owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to that Fund.

(d) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

INTERVENTION ON THE HIGH SEAS ACT

SEC. 202. Section 17 of the Intervention on the High Seas Act is amended to read as follows:

"SEC. 17. The Fund established under the Oil Spill Liability and Compensation Act of 1986 shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

CLEAN WATER ACT

SEC. 203. Section 311 of the Clean Water Act is amended as follows:

(a) Subparagraph (H) of paragraph (2) of subsection (c) amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: "in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Fund established under the Oil Spill Liability and Compensation Act of 1986".

(b) Subsection (d) is amended by striking out the last sentence.

(c)(1) Subsections (f), (g), and (i) of section 311 of the Clean Water Act shall not apply with respect to any discharge of oil resulting in removal costs for which liability is established under section 102 of this Act.

(2) Paragraphs (2) and (3) of subsection (f) are amended by striking out "under subsection (c) for the removal of such oil or substance by the United States Government" each place it appears and inserting in lieu thereof "under subsection (c) for the removal of such oil or substance by the United States Government and for payments made pursuant to section 103(a)(4)(A) of the Oil Pollution Liability and Compensation Act of 1986".

(d) Subsection (i) is amended by striking out "(1)" after "(i)" and striking out paragraphs (2) and (3).

(e) Subsection (k) is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by *the* revolving fund established under section 311(k) of the Clean Water Act.

(f) Subsection (1) is amended by striking out the second sentence.

(g) Subsection (p) is repealed.

(h) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Compensation Fund, established under the Oil Pollution Liability and Compensation Act of 1986, shall be available to carry out subsections (c), (d), (i), and (l) as those subsections apply to discharges, or substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in such Oil Spill Compensation Fund.".

DEEPWATER PORT ACT

SEC. 204. The Deepwater Port Act of 1974 is amended as follows:

(a) In section 4(c)(1) strike "section 18(l) of this Act;" and insert in lieu thereof "section 104 of the Oil Spill Liability and Compensation Act of 1986,".

(b) Subsections (b), (d), (e), (f), (g), (h), (i) (j), (l), (n), and paragraph (1) of subsection (m) of section 18 are deleted.

(c) Paragraph (3) of subsection (c) of section 18 is amended by striking "Deepwater

Port Liability Fund established pursuant to subsection (f) of this section", and inserting in lieu thereof "fund established under the Oil Spill Liability and Compensation Act of 1986".

(d) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d) respectively, and paragraphs (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(e) Any amounts remaining in the Deepwater Port Liability Fund, established under section 18(f) of the Deepwater Port Act of 1974, shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

SEC. 205. Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund.

NOTICE TO STATE; INCREASED PENALTIES FOR FAILURE TO REPORT

SEC. 206. (a) The first sentence of section 311(b)(5) of the Clean Water Act is amended by inserting after "of the United States Government" the phrase "and of any affected State".

(b) The second sentence of section 311(b)(5) of the Clean Water Act is amended by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting in lieu thereof "fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than three years (or not more than five years in the case of a second or subsequent conviction), or both".

TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

DEFINITIONS

SEC. 301. For the purposes of this title—

(1) the terms "ship", "owner", "oil", "pollution damage", and "incident" shall have the meaning provided in article I of the Civil Liability Convention;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "financial responsibility" shall have the same meaning as "financial security" under the Civil Liability Convention;

(4) the term "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984; and

(5) the term "International Fund" means the International Oil Pollution Compensation Fund, established under article 2 of the Fund Convention.

APPLICABILITY OF CONVENTIONS

SEC. 302. If the Civil Liability Convention and the Fund Convention are *ratified by the United States, with the advice and consent of the Senate, and* determined by the President to be consistent with the provisions of sections 102, 103, and 106 of this Act, during any period that the Civil Liability Convention and the Fund Convention are in force with respect to the United States, liability of an owner for pollution damage arising from an incident involving a ship shall be determined in accordance with the Civil Liability Convention and Fund Convention. During such a period, no claim with respect to pollution damage which is compensable under the International Fund may be made against the Oil Spill Compensation Fund under paragraph (2) (A), (B), or (C), or (4)(B) of section 103(a) of this Act. *Nothing in this title shall constitute a ratification of either the Civil Liability Convention or the Fund Convention.*

RECOGNITION OF INTERNATIONAL FUND

SEC. 303. The International Fund is recognized under the laws of the United States as a legal person, and shall have the capacity to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for the service of process in any legal proceedings involving the International Fund within the United States. The International Fund and its assets shall be exempt from all direct taxation in the United States.

ACTION IN UNITED STATES COURTS

SEC. 304. (a) In any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

CONTRIBUTION TO INTERNATIONAL FUND

SEC. 305. (a) The amount of any contribution to the International Fund which is required to be made under article 10 of the Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Compensation Fund, established under this Act.

(b) The President may, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal, installation, or other installations in the United States under article 10 of the Fund Convention to provide all information relating to that oil as may be necessary to carry out subsection (a) of this section and articles 10, 12, 13, 14, and 15 of the Fund Conventions.

RECOGNITION OF FOREIGN JUDGMENTS

SEC. 306. Any final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this Act, when that judgment has become enforceable in that country and is no longer subject to ordinary form of review, except where—

(1) the judgment was obtained by fraud, or

(2) the defendant was not given reasonable notice and a fair opportunity to present its case.

FINANCIAL RESPONSIBILITY

SEC. 307. (a) The owner of each ship which is documented under the laws of the United States which is subject to the Civil Liability Convention shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in Article VII of the Civil Liability Convention.

(b) The owner of each ship (other than a ship to which subsection (a) applies or a ship which is a public vessel), which is subject to the Civil Liability Convention and which enters or leaves a port or terminal in the United States or uses an outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in article VII of the Civil Liability Convention. Any ship which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of this subsection. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of section 104 of this Act.

(c) The President is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention.

(d) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate demonstrating compliance with this section.

(e) The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility or to any port or place in the United States, or (2) detain at the facility or port or place in the United States, any ship subject to this section which, upon request, does not produce the certificate demonstrating compliance with this section or regulations issued hereunder.

(f) Any person who, after notice and an opportunity for a hearing, is found to have violated this section, any regulation issued thereunder, or any denial or detention order issued under subsection (e) of this section shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President in accordance with the procedures set forth in section 104(f) of this Act.

(g) The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any ship owned by the United States and used for commercial purposes.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to.

AMENDMENT NO. 3082

Mr. MITCHELL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] proposes an amendment numbered 3082.

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

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

The amendment is as follows:

On page 42, line 19, section 205 is amended to read as follows:

"SEC. 205. Title III, other than section 302, of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed."

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

The amendment (No. 3082) was agreed to.

Mr. MITCHELL. Mr. President, I am pleased that the Senate is considering S. 2799, the Oil Pollution Liability and Compensation Act of 1986. This legislation, which I introduced on September 9, provides a comprehensive framework for compensation of damages and costs associated with oil spills. This issue is of critical importance to Maine and other coastal States that need every available means of protecting their vulnerable marine resources.

Maine has over 3,000 miles of tidal coastline. It is the largest coastal State with its own oil spill statute and compensation fund. The Maine statute has been used to respond to over 100 spills in our waters. It has worked effectively to protect our shores, without being so burdensome as to discourage vessels from using Maine waters.

Due to this experience, I have long held that any Federal oil spill legislation must build on, not erase, State statutes such as Maine's. This legislation preserves the authority of States to retain or enact their own oil spill statutes and compensation funds.

I am not alone in this belief. The Environment and Public Works Committee unanimously reported S. 2799 on September 23, after 2 days of hearings on the bill. The States we heard from were opposed to preemption.

The preemption issue has long been a stumbling block to enactment of legislation. For over 10 years Congress has struggled with this issue, trying to reach an accord that treats all interested parties in a reasonable fashion.

The search for Federal oil spill legislation has been complicated this year by the pending international protocols on oil pollution liability. The protocols, as currently drafted, preempt Federal and State law. This is unacceptable to me, as I indicated in testimony before the Senate Foreign Relations Committee earlier this year. I will continue to oppose the protocols unless they are accompanied by a reservation that provides the protocols are not preemptive. The Department of Transportation, as well as the State Department, are providing constructive assistance in developing such reservations to the protocols.

Preemption is an issue debated by Congress when considering almost any legislation. This is particularly true in the environmental arena. Debate over each of our environmental laws has included an examination of preemption of States' authority to continue to protect their own citizens. Each of those debates has concluded with the same result: preemption of State laws is rejected. This is true in each of our Federal environmental statutes, including Superfund, the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act.

There is no justification for making the first exception to our nonpreemption policy in this case. States, like the Federal Government, are given the responsibility of protecting their citizens. Reasonable States can and do differ on the best methods of providing such protection. If the Federal Government disagrees with the States, our system permits each scheme to remain in force to maximize protection of the public.

The policy of nonpreemption does not require each State to have a statute, or to have a statute that differs from the approach taken by the Federal Government. For example, a coastal State may review this legislation and decide it is a needed improvement over State law. That State may choose to utilize only the Federal system. Similarly, States such as Maine, may continue to use their own statute as a complement to the Federal regime.

Some declaim the necessity for preemption. If preemption of State oil spill laws is an essential part of interstate commerce, as they suggest, there is no evidence for it. Maine has seen no diminution in the number of vessels traveling in her waters due to her 15-year old statute, which provides for strict, joint and several liability. Representatives of industry testifying before the Environment Committee affirmed that they are unaware of any shift in traffic due to State oil pollution laws.

In States such as Maine, assuring fishermen that they will be compensated is very important. Few can think of Maine without imagining our shores highlighted by lobster pots. It is understandable that a State in which fishing and tourism are such central industries would want to provide adequate protection. It is also essential that such a right be preserved. Without such rights of States, I would be unalterably opposed to any Federal oil spill legislation. Because I believe this Congress will continue its policy of nonpreemption, I introduced this legislation and support its passage here today. We have come too far to deprive States of these essential rights.

Mr. President, I urge the passage of S. 2799.

Mr. LAUTENBERG. Mr. President, I rise in strong support of S. 2799, a bill that will address the serious environmental threat posed by oil spills. I joined Senators MITCHELL, STAFFORD, and other members of the Environment and Public Works Committee in introducing this legislation, and worked along with my colleagues on the committee to perfect the bill before us today.

As was vividly underscored by the oil spill in the Delaware River on September 10, this is a critical problem for coastal States. Indeed I stand here today with the images of the recent spill in the Delaware River fresh in my mind. The day after I joined in introducing the bill before us today, we in the Delaware River region found ourselves facing the third major oil spill in the last year.

I flew to the site of that spill to monitor firsthand how the cleanup efforts were proceeding. And this experience made me even more determined to produce a bill that will address and prevent oil spills.

S. 2799 is such a bill. It not only establishes a comprehensive liability and funding system, but also allows fund money to be used for the costs of measures to identify, investigate, and take enforcement and abatement action against spills. This means fund money is provided not only for compensation but for prevention of damages.

We must get a better handle on why spills are happening and what can be done to prevent them. That is why during committee consideration of this bill, I introduced two amendments specifically addressing the prevention issue, both of which were unanimously adopted.

My first committee amendment was designed to respond to and ameliorate the troubling trend in the Delaware River region. The amendment requires the President to conduct a study, and report the results to Congress not later than 1 year after enactment of oil spill legislation, on improved methods for preventing oil spills. The President is specifically required to examine the causes of recent major oil spills in the Delaware River, and consider modifying requirements for such things as crew training and tanker construction, with the goal of reducing the likelihood of oil spills. In addition, under section 103(a)(9), the President shall use money from the oil spill fund established under this bill, for the costs of this study.

In light of the three major spills that have occurred in the last year in the Delaware, this study is needed, and should have a significant positive effect for oil spill prevention in my region and across the Nation.

Mr. President, my second committee amendment broadened current law's

requirements for notification in the event of a spill and stiffened the penalties for failure to notify. Under current Clean Water Act provisions, as soon as the person in charge of a vessel or other facility knows of a spill, he must immediately notify the appropriate Federal agency. This amendment required that the appropriate State agency also be notified. This ensures that States get the same speedy notification received by the Coast Guard, and will assist our States in responding to and assessing spills.

To provide stronger incentives for notification, the amendment also stiffened the penalties for failure to provide immediate notification. Following the format of the criminal penalty provision I sponsored in the Senate Superfund bill, and which the conference adopted, this provision in S. 2799 affords felony status to failure to notify, increasing the term of imprisonment to not more than 3 years, or 5 years for a second or subsequent conviction, and increasing monetary penalties to up to $250,000. This amendment will deter oil spillers for providing late notification, a practice which exacerbates a spill by delaying quick response.

With the addition of these provisions, S. 2799 responds to the problem that there is no comprehensive program for responding to oil spills. Some States have spill laws and funds. Patchwork Federal laws exist. And, international conventions are pending before the Senate.

The need for comprehensive legislation is clear. We just had a 300,000 gallons spill in the Delaware. In addition, last September a spill of 435,000 gallons of oil in the Delaware River damaged the shores of New Jersey, Pennsylvania, and Delaware. The spill, one of the largest ever on the Delaware, killed thousands of birds and other wildlife, and left a lasting mark on the shoreline following a weeklong cleanup. During the 7-month period following this spill, Coast Guard statistics show that other major mechanical failures on 45 vessels caused groundings, collisions with piers, and leaking storage tanks.

Following the spill last September, another tanker hit a pier and spilled 189,000 gallons of crude oil into the Delaware. Such spills reflect ships with poorly trained crews or badly maintained equipment. And such spills are a national problem. In the last few years alone we have had major spills affecting California, Texas, Louisiana, and Oregon.

We need a Federal oil spill bill. A Federal mechanism for oil spill cleanup and compensation to aid States that are vulnerable to spills. A bill that protects our precious waterways, oceans, marine, and other wildlife from the ravages of oil spills.

S. 2799 will meet these goals. It establishes a comprehensive Federal oil spill system that covers all potential sources of oil spill. It sets out liability for oil pollution damages and establishes a fund to pay damages when compensation from polluters is not available, or when damages exceed liability limits. And importantly, it applies to the previous spills, including, for example, those recently occurring in the Delaware River, such as the discharge on September 10, 1986, by the Viking Osprey.

S. 2799 achieves these objectives without preempting State oil spill programs. It has been my position for some time that Federal oil spill legislation must not undermine successful State programs. S. 2799 clearly states that it does not preempt State laws or funds.

The importance of a nonpreemption provision is underscored by the Supreme Court's decision in Exxon versus Hunt, which followed 6 years of litigation. That decision essentially preempted New Jersey's taxing authority for the State spill fund.

The spill fund contested in that litigation is the same fund in New Jersey which covers oil spills. An amendment I sponsored to the Senate Superfund bill to prevent this preemption was adopted by the conference on H.R. 2005.

I strongly support S. 2799, legislation which provides a Federal solution to a serious national problem, and does so without compromising the important efforts many coastal States are making. It is an important step forward in protecting and cleaning up the environment from the effects of oil spills.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2799

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 "Oil Pollution Liability and Compensation Act of 1986".

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

DEFINITIONS

SEC. 101. For the purposes of this Act—

(1) the terms "vessel", "public vessel", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility", and "barrel" shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil;

(5) the term "claimant" means any person who presents a claim for compensation under this Act;

(6) the term "damages" means damages for economic loss or the loss of or injury to natural resources as specified in section 102(a) of this Act;

(7) the term "deepwater port facility" means an offshore facility which is or was licensed under the Deepwater Port Act of 1974;

(8) the term "discharge" means any emission, intentional or unintentional, into the environment, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(9) the term "environment" means the navigable waters, the waters of the contiguous zone, the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act, adjoining shorelines, and the ambient air above such waters and shorelines;

(10) the term "foreign offshore unit" means a structure or group of structures which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(11) the term "Fund" means the Oil Spill Compensation Fund, hereby established under this Act;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "lessee" means a person holding a leasehold interest in an oil or gas lease on submerged lands of the Outer Continental Shelf, granted or maintained under the Outer Continental Shelf Lands Act;

(14) the term "liable" or "liability" under this Act shall be construed to be the standard of liability which obtains under section 311 of the Clean Water Act;

(15) the term "mobile offshore drilling unit" means a vessel capable of use as an Outer Continental Shelf facility to drill for oil;

(16) the term "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone estblished by the Magnuson Fishery Conservation and Management Act), any State or local government, or any foreign government;

(17) the term "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(18) the term "Outer Continental Shelf facility" means an offshore facility which is located, in whole or in part, on the Outer

Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(19) the term "owner or operator" means—

(A) with respect to an Outer Continental Shelf facility other than a pipeline or mobile offshore drilling unit, the lessee or permittee of the area in which the facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the facility is located (where the holder is a different person than the lessee or permittee);

(B) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility, from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), the owner or operator of the unit, and such unit shall be deemed to be a tanker;

(C) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility—

(i) from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), to the extent removal costs or damages exceed the limitation specified in section 102(c)(1)(A), or

(ii) from which oil is discharged below the surface of the water (or which posed a substantial threat of such a discharge),

the lessee or permittee of the area in which the unit is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the unit is located (where the holder is a different person than the lessee or permittee);

(20) the term "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) the term "removal costs" means the costs of removal taken after a discharge of oil has occurred or where there was a substantial threat of a discharge of oil, to prevent, minimize, or mitigate oil pollution from that incident, including all costs of completing removal as determined under section 106(d);

(22) the term "tanker" means a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo; and

(23) the terms "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

LIABILITY

SEC. 102. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section, the owner or operator of a vessel or an onshore or offshore facility from which oil is discharged, or which posed the threat of a discharge which causes the incurrence of removal costs, shall be liable for—

(1)(A) all removal costs incurred by the United States Government or a State under subsection (c), (d), (e), (f)(4), or (l) of section 311 of the Clean Water Act or under the Intervention on the High Seas or section 18 of the Deepwater Port Act of 1974; and

(B) any removal costs incurred by any person, including, but not limited to, any State; and

(2) all damages or economic loss or loss of natural resources resulting from such a discharge, including—

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use, including loss of subsistence use, of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources; and

(F) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b)(1) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the discharge or threat of discharge of oil and the damages resulting therefrom were caused solely by—

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) the defendant exercised due care with respect to the oil concerned, taking into consideration the characteristics of such oil, in light of all relevant facts and circumstances, and (ii) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of the foregoing paragraphs.

(2) In any case where the owner or operator of a vessel or an onshore or offshore facility can establish by a preponderance of the evidence that a discharge and the damages resulting therefrom were caused solely by an act or omission of a third party in accordance with paragraph (1)(C) (or solely by such an act or omission in combination with an act of God or an act of war), such third party shall be liable under this section as if such third party were the owner or operator of a vessel or onshore or offshore facility from which the discharge actually occurred. Where the owner or operator of a tanker or an onshore or offshore facility which handles or stores oil in bulk or commercial quantities, from which oil is discharged, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall promptly pay to the United States Government, and any other claimant, the costs of removal or damages claimed and shall be entitled by subrogation to all rights of the United States Government or other claimant to recover such costs of removal or damages from such third party under this sub-section.

(c)(1) The liability of an owner or operator of a vessel or an onshore or offshore facility for damages and removal costs under this section for each discharge or incident shall not exceed—

(A) $500 per gross ton or $10,000,000, whichever is greater, of any tanker carrying oil in bulk or in commercial quantities as cargo, including any such barge operating in the navigable waters;

(B) $300 per gross ton or $500,000, whichever is greater, of any other vessel;

(C) the total of all removal costs under subsection (a)(1) of this section plus $75,000,000 for any Outer Continental Shelf facility;

(D) $100,000,000 for any deepwater port facility (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $100,000,000 exceeds $500 per gross ton of such vessel); or

(E) $100,000,000 for any other onshore or offshore facility.

The liability of an owner or operator under this section for interest (including prejudgment interest) shall not be subject to the limitations of this paragraph.

(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel or an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs not offset by any removal costs incurred on behalf of such owner or operator, if (A) the discharge of oil was the result of willful misconduct or gross negligence within the privity or knowledge of the owner or operator or of a violation (within the privity or knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations; or (B) the owner or operator fails or refuses to report the discharge where required by law or to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities or to provide removal action upon order of a responsible official. For the purpose of this paragraph, applicable standards or regulations with respect to a vessel shall be those adopted or promulgated by a Federal agency.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the defenses of subsection (b) of this section, all removal costs incurred by the United States Government or any State of local official or agency in connection with a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4)(A) The President is authorized to establish by regulation, with respect to any class or category of onshore or offshore facility subject to paragraph (1)(D) or (E) of this subsection, a maximum limit of liability under this section of less than $100,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(B) The President shall, by regulation, not less often than every three years, adjust the limits of liability specified in paragraph (1)

of this subsection to reflect significant increases in the Consumer Price Index.

(d)(1) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be (A) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States, and (B) to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State, and (C) where subsection (e) of this section applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such government. The President, or the authorized representative of any State or of the foreign government, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subsection (a)(2)(C) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same discharge and natural resource.

(2)(A) The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials discretion, assess damages for those natural resources under the State's trusteeship.

(B) The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act for those natural resources under their trusteeship.

(C) Any determination or assessment of damages to natural resources for the purposes of this Act made by a Federal or State trustee in accordance with the regulations promulgated under paragraph (3) of this subsection shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(3)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator of the Environmental Protection Agency, the Director of the Fish and Wildlife Service, and the heads of other affected agencies, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil for the purpose of this Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or units of affected areas, where damages equal the costs of restoration, replacement, or acquisition of equivalent resources, plus demonstrated additional lost use value or other damages beyond such costs, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss, and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(e)(1) Except where title III of this Act applies, the recovery of removal costs and damages by (A) persons residing in a foreign country, (B) the government of a foreign country, or (C) any agency or political subdivision of a foreign country, under this Act, shall be exclusively in accordance with this subsection.

(2) A claimant under this subsection must demonstrate that the claimant has not been otherwise compensated for incurred removal costs or damages. Except with respect to paragraph (3)(D) of this subsection, a claimant under this subsection must demonstrate (A) that recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or (B) that the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(3) Where a discharge, or substantial threat of a discharge of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country occurs, claims for removal costs and damages may be made under this subsection if the removal costs or damages resulted from a discharge of, or substantial threat of a discharge, of oil from—

(A) an Outer Continental Shelf facility or a deepwater port facility,

(B) a vessel occurring in the navigable waters of the United States,

(C) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States; or

(D) a tanker that received oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act for transportation to a port in the United States, the discharge or threat having occurred prior to delivery to that port.

(4) This subsection shall apply only in the case of discharges of oil occurring after the enactment of this Act.

(f)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or onshore or offshore facility or from any person who may be liable for a discharge or threat of discharge under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this Act, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(g) The owner or operator of a vessel shall be liable in accordance with this section, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and section 311 of the Clean Water Act, under maritime tort law, and as provided in section 106 of this Act, notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183), or the absence of any physical damage to the proprietary interest of the claimant.

USES OF FUND

SEC. 103. (a) The President shall use the money in the Fund for the following purposes:

(1) all removal costs or other costs of carrying out the purposes of subsections (c), (d), (i), and (l) of section 311 of the Clean Water Act, sections 5 and 7 of the Intervention on the High Seas Act, and section 18 of the Deepwater Port Act, with respect to discharges, or substantial threats of discharges, of oil (as the term "oil" is defined in each respective Act);

(2) payment of any claim for removal costs or damages—

(A) in excess of the amount for which the owner or operator of the vessel or onshore or offshore facility from which oil is discharged is liable under section 102 of this Act;

(B) where the source of the discharge of oil is not known or cannot be identified;

(C) in any case where the claim has not been satisfied in accordance with subsection (c) of this section; and

(D) subject to, but in excess of the combined compensation available under, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984;

(3) payment of any claim for removal costs and damages that have resulted from the discharge, or substantial threat of a discharge, of oil from a foreign offshore unit;

(4)(A) payment of costs incurred by any State in responding to a discharge, or substantial threat of a discharge, of oil into the navigable waters or adjoining shorelines from a vessel, an onshore facility, an offshore facility, or a foreign offshore unit, as provided in subsection (d) of this section;

(B) reimbursement to any State for the payment of any claims for removal costs or damages payable under this Act which such State has paid with funds under the control of such State, including payment pursuant to a delegation under subsection (c) of this section;

(5) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil;

(6) the costs of Federal or State efforts in the res-toration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil;

(7) payment of contributions to the International Fund as prescribed in section 305 of this Act;

(8) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in

strike forces, emergency task forces, or other response teams;

(9) the costs of a program to identify, investigate, and take enforcement and abatement action against discharges of oil, including the provisions of section 311(j)(1)(C) and (D) of the Clean Water Act; and

(10) all administrative and personnel costs of administering the Fund and this Act.

(b) The maximum amount which may be paid from the Fund with respect to any single discharge or incident, in combination with payment, if any, under the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984, shall not exceed $500,000,000.

(c)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil under this Act.

(B) Whenever the President receives information from any person alleging that a person has incurred removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil respecting which the owner or operator of a vessel or onshore or offshore facility is or may be liable under section 102 of this Act, the President shall notify the owner, operator, or guarantor or such vessel or facility of that allegation. Such owner or operator or guarantor may, within five days after receiving the notification or presentation of any claim by a claimant, deny the allegation, or deny liability for removal costs and damages for any of the reasons set forth in subsection (b) of section 102 of this Act.

(C) The owner or operator of any vessel or onshore or offshore facility from which oil has been discharged shall provide notice to all potentially injured parties.

(D) No claims may be asserted against the Fund pursuant to subsection (a) unless such claim is presented in the first instance to the owner or operator or guarantor of the vessel or onshore or offshore facility from which oil has been discharged, if known to the claimant, and to any other person known to the claimant who may be liable under section 102. In any case where the claim has not been satisfied within one hundred eighty days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(d) The Governor of each State, or any appropriate State official designated by the Governor, is authorized to obligate the Fund for the payment of removal costs in an amount not to exceed $250,000 per discharge or substantial threat of discharge of oil, for the purpose of immediate response, subject only to the requirement that the President be notified within twenty-four hours of any such obligation under the authority of this sentence. In addition, the President shall enter into an agreement with the Governor of any interested State to provide a procedure by which the Governor or designated State official may undertake additional removal action or obligate the Fund for the additional payment of removal costs for response to a particular discharge or substantial threat of discharge, subject to such terms and conditions as may be agreed upon. Payments under subsection (a)(4)(A) of this section, other than as authorized by the first sentence of this subsection, shall be made in accordance with such agreements. The President shall, not later than six months after the enactment of this Act, publish proposed regulations further establishing how the authority of this subsection to obligate the Fund or enter into agreements is to be exercised, and, not later than three months after the close of the comment period on such proposed regulations, shall promulgate such regulations.

(e)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the removal costs or damages from the responsible party.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for costs or damages shall be subrogated to all rights, claims, and causes of action for those costs and damages that the claimant has under this Act or under any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to any limitation of liability with respect to an owner or operator under section 102(c), all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner or operator or (subject to section 104(e)) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

(f) The Fund shall not be available to pay any claim for costs or damages to the extent the discharge or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(g) The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h)(1) No claim may be presented under this section for recovery of removal costs after the date six years after the date of completion of all removal action.

(2) No claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which final regulations are promulgated under section 102(d)(3) of this Act.

(3) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(i) Where the President has paid out of the Fund for any removal costs or any costs specified under subsection (a) (6) or (7), no other claim may be paid out of the Fund for the same costs.

(j) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

FINANCIAL RESPONSIBILITY

SEC. 104. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry oil as cargo or fuel), using any port or place in the United States or the navigable waters or any outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, in the case of a tanker, the owner or operator could be subjected under section 102(c)(1)(A) of this Act, or to which, in the case of any other vessel, the owner or operator could be subjected under section 102(c)(1)(B) of this Act, in a case where the owner or operator would be entitled to limit liability under that section. If the owner or operator owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any outer continental shelf

facility, and deepwater port facility, or any port or place in the United States, or (B) detain at such a facility or port or place, any vessel that, upon request, does not produce the certification required under this subsection or the regulations issued hereunder.

(4) Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any oil carried as cargo.

(b) Each owner or operator with respect to an outer continental shelf facility, deepwater port facility, or other offshore facility, shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the owner or operator could be subjected under section 102 of this Act in a case where the owner or operator would be entitled to limit liability under that section, or, in the case of an Outer Continental Shelf facility, in the amount of $100,000,000. Such evidence of financial responsibility shall be established according to regulations prescribed by the President.

(c) Financial responsibility under this section may be established by any one, or by any combination, of the following methods, which the President determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(d) Any claim for which liability may be established under section 102 of this Act may be asserted directly against any guarantor providing evidence of financial responsibility for an owner or operator liable under that section for costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under section 102. The guarantor may also invoke the defense that the discharge was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that might be available in proceedings brought by the owner or operator against the guarantor.

(e) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 102 for the purpose of satisfying the requirement for evidence of financial responsibility. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiation or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 102 of this Act or other applicable law.

(f)(1) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section or the regulations issued thereunder, or with a denial or detention order issued under subsection (a)(3) of this section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(2) In addition to, or in lieu of, assessing a penalty under paragraph (1) of this subsection, the President may request the Attorney General to secure such relief as necessary to compel compliance with this section, including, but not limited to, a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g) Any regulation respecting financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, shall be deemed and construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by new regulations issued under this section.

LITIGATION, JURISDICTION AND VENUE

SEC. 105. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in subsections (a) and (c) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act (which shall be deemed to include actions under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984), without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund and the International Fund, established under article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, shall reside in the District of Columbia.

(c) A State trial court of competent jurisdiction over similar claims may consider claims under section 102 or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of section 102, section 103, and title III of this Act.

(d) The provisions of subsections (a), (b), and (c) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, as provided by title IV of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(e) The President may prescribe the necessary regulations to carry out this Act and all obligations of the United States under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

(f) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge of oil, or any damages associated therewith, commenced prior to enactment of this Act.

(g)(1) Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which regulations are promulgated under section 102(d)(3) of this Act.

(2) An action for recovery of removal costs referred to in section 102(a)(1) must be commenced within three years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. Except as otherwise provided in this paragraph, an action may be commenced under section 102 for recovery of removal costs at any time after such costs have been incurred.

(3) No action for contribution for any removal costs or damages may be commenced more than three years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than three years after the date of payment of such claim.

(5) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

STATE LAWS AND PROGRAMS

SEC. 106. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the dis-

charge of oil or other pollution by oil within such State. Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to discharges of oil.

(b) Nothing in this Act or in section 9507 of the Internal Revenue Code of 1954 shall in any way affect, or be construed to affect, the authority of any State—

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

(c) A State may enforce, on the navigable waters of such State, the requirements for evidence of financial responsibility applicable under section 104 of this Act.

(d) The President shall consult with the affected State or States on the appropriate removal action to be taken. Removal with respect to any discharge or incident shall be considered completed when so determined by the President and the Governor or Governors of the affected State or States.

(e) Nothing in this Act, the Act of March 3, 1851, as amended (46 U.S.C. 183 et seq.), or section 9507 of the Internal Revenue Code of 1954, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) to impose additional liability or additional requirements, or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law,

relating to the discharge, or substantial threat of a discharge, of oil.

STUDY OF SPILL PREVENTION IN RESTRICTED WATERS

SEC. 107. The President shall conduct a study, and report the results of such study to the Congress not later than one year after the enactment of this Act, on improved methods for the prevention of discharges of oil in restricted waters and similar portions of bays, estuaries, and near shore waters. In the conduct of such study, the President shall examine the causes of recent major discharges of oil from vessels in the Delaware River, and consider modifications in tanker construction and operation standards, crew training and locale familiarization requirements, improvements in navigation aids, and other approaches with the potential for reducing the likelihood for discharges of oil in such waters.

TITLE II—CONFORMING AMENDMENTS

TRANS-ALASKA PIPELINE FUND

SEC. 201. (a) Section 204(b) of the Trans-Alaska Pipeline Authorization Act is amended, in the first sentence—

(1) by inserting after the words "any area" the words "in the State of Alaska";

(2) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline"; and

(3) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability and Compensation Act of 1986.".

(b) Section 204(c) of the Trans-Alaska Pipeline Authorization Act is repealed. This repeal shall not affect the applicability of that section to claims arising before the enactment of this Act. The repeal of paragraph (4), (5), and (8) of that provision shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under subsection (c) of this section and the rebate of all remaining amounts under, and the completion of all actions required to carry out, such subsection.

(c)(1) Not later than two hundred and ten days after the date of enactment of this Act, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the President the total amount of claims outstanding against that Fund as of the date of enactment of this Act. The amount of that Fund exceeding the total amount so certified shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(2) After the settlement of all claims described in paragraph (1) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in that Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(3) Whenever a rebate is made on a pro rata basis to the owners of oil under paragraph (1) or (2) of this subsection, each owner's share of the rebate shall be an amount determined by dividing the amount contributed by that owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to that Fund.

(d) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

INTERVENTION ON THE HIGH SEAS ACT

SEC. 202. Section 17 of the Intervention on the High Seas Act is amended to read as follows:

"SEC. 17. The Fund established under the Oil Spill Liability and Compensation Act of 1986 shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

CLEAN WATER ACT

SEC. 203. Section 311 of the Clean Water Act is amended as follows:

(a) Subparagraph (H) of paragraph (2) of subsection (c) amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: "in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Fund established under the Oil Spill Liability and Compensation Act of 1986".

(b) Subsection (d) is amended by striking out the last sentence.

(c)(1) Subsections (f), (g), and (i) of section 311 of the Clean Water Act shall not apply with respect to any discharge of oil resulting in removal costs for which liability is established under section 102 of this Act.

(2) Paragraphs (2) and (3) of subsection (f) are amended by striking out "under subsection (c) for the removal of such oil or substance by the United States Government" each place it appears and inserting in lieu thereof "under subsection (c) for the removal of such oil or substance by the United States Government and for payments made pursuant to section 103(a)(4)(A) of the Oil Pollution Liability and Compensation Act of 1986".

(d) Subsection (i) is amended by striking out "(1)" after "(i)" and striking out paragraphs (2) and (3).

(e) Subsection (k) is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the revolving fund established under section 311(k) of the Clean Water Act.

(f) Subsection (1) is amended by striking out the second sentence.

(g) Subsection (p) is repealed.

(h) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Compensation Fund, established under the Oil Pollution Liability and Compensation Act of 1986, shall be available to carry out subsections (c), (d), (i), and (l) as those subsections apply to discharges, or substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in such Oil Spill Compensation Fund.".

DEEPWATER PORT ACT

SEC. 204. The Deepwater Port Act of 1974 is amended as follows:

(a) In section 4(c)(1) strike "section 18(l) of this Act;" and insert in lieu thereof "section 104 of the Oil Spill Liability and Compensation Act of 1986,".

(b) Subsections (b), (d), (e), (f), (g), (h), (i) (j), (l), (n), and paragraph (1) of subsection (m) of section 18 are deleted.

(c) Paragraph (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section", and inserting in lieu thereof "fund established under the Oil Spill Liability and Compensation Act of 1986".

(d) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d) respectively, and paragraphs (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(e) Any amounts remaining in the Deepwater Port Liability Fund, established under section 18(f) of the Deepwater Port Act of 1974, shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

SEC. 205. Title III, other than section 302, of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed.

NOTICE TO STATE; INCREASED PENALTIES FOR FAILURE TO REPORT

SEC. 206. (a) The first sentence of section 311(b)(5) of the Clean Water Act is amended by inserting after "of the United States Government" the phrase "and of any affected State".

(b) The second sentence of section 311(b)(5) of the Clean Water Act is amended by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting in lieu thereof "fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than three years (or not more than five years in the case of a second or subsequent conviction), or both".

TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

DEFINITIONS

SEC. 301. For the purposes of this title—

(1) the terms "ship", "owner", "oil", "pollution damage", and "incident" shall have the meaning provided in article I of the Civil Liability Convention;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "financial responsibility" shall have the same meaning as "financial security" under the Civil Liability Convention;

(4) the term "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984; and

(5) the term "International Fund" means the International Oil Pollution Compensation Fund, established under article 2 of the Fund Convention.

APPLICABILITY OF CONVENTIONS

SEC. 302. If the Civil Liability Convention and the Fund Convention are ratified by the United States, with the advice and consent of the Senate, and determined by the President to be consistent with the provisions of sections 102, 103, and 106 of this Act, during any period that the Civil Liability Convention and the Fund Convention are in force with respect to the United States, liability of an owner for pollution damage arising from an incident involving a ship shall be determined in accordance with the Civil Liability Convention and Fund Convention. During such a period, no claim with respect to pollution damage which is compensable under the International Fund may be made against the Oil Spill Compensation Fund under paragraph (2)(A), (B), or (C), or (4)(B) of section 103(a) of this Act. Nothing in this title shall constitute a ratification of either the Civil Liability Convention or the Fund Convention.

RECOGNITION OF INTERNATIONAL FUND

SEC. 303. The International Fund is recognized under the laws of the United States as a legal person, and shall have the capacity to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for the service of process in any legal proceedings involving the International Fund within the United States. The International Fund and its assets shall be exempt from all direct taxation in the United States.

ACTION IN UNITED STATES COURTS

SEC. 304. (a) In any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

CONTRIBUTION TO INTERNATIONAL FUND

SEC. 305. (a) The amount of any contribution to the International Fund which is required to be made under article 10 of the Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Compensation Fund, established under this Act.

(b) The President may, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal, installation, or other installations in the United States under article 10 of the Fund Convention to provide all information relating to that oil as may be necessary to carry out subsection (a) of this section and articles 10, 12, 13, 14, and 15 of the Fund Conventions.

RECOGNITION OF FOREIGN JUDGMENTS

SEC. 306. Any final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this Act, when that judgment has become enforceable in that country and is no longer subject to ordinary form of review, except where—

(1) the judgment was obtained by fraud, or

(2) the defendant was not given reasonable notice and a fair opportunity to present its case.

FINANCIAL RESPONSIBILITY

SEC. 307. (a) The owner of each ship which is documented under the laws of the United States which is subject to the Civil Liability Convention shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in Article VII of the Civil Liability Convention.

(b) The owner of each ship (other than a ship to which subsection (a) applies or a ship which is a public vessel), which is subject to the Civil Liability Convention and which enters or leaves a port or terminal in the United States or uses an outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in article VII of the Civil Liability Convention. Any ship which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of this subsection. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of section 104 of this Act.

(c) The President is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention.

(d) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate demonstrating compliance with this section.

(e) The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility or to any port or place in the United States, or (2) detain at the facility or port or place in the United States, any ship subject to this section which, upon request, does not produce the certificate demonstrating compliance with this section or regulations issued hereunder.

(f) Any person who, after notice and an opportunity for a hearing, is found to have violated this section, any regulation issued thereunder, or any denial or detention order issued under subsection (e) of this section shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President in accordance with the procedures set forth in section 104(f) of this Act.

(g) The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any ship owned by the United States and used for commercial purposes

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

TIME LIMITATION AGREEMENT—H.R. 5484

Mr. SIMPSON. Mr. President, I ask unanimous consent that at 2 p.m. on Tuesday, September 30, the Senate resume consideration of the drug bill, H.R. 5484, and the following amendments be the only amendments in order, with the exception of the pending amendment in the nature of a substitute; and they be first degree amendments only;

An amendment to be offered by Senators DOMENICI and CHILES dealing with the funding of the bill, to be limited to 1 hour, to be equally divided in the usual form;

An amendment to be offered by Senators HATFIELD and STENNIS dealing with the funding of the bill, to be limited to 1 hour, to be equally divided in the usual form.

I ask unanimous consent that following the disposition of the two above mentioned amendments, the Senate proceed immediately, without any intervening action, motion, or debate to adoption of the substitute amendment, as amended, to be followed by third reading without any intervening action, motion, or debate and final passage of H.R. 5484, as amended, without any intervening action, motion, or debate.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. SIMPSON. Finally, I ask unanimous consent that no motions to commit the bill be in order.

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

Mr. SIMPSON. Mr. President, I would inquire of the Democratic leader if he has any further business.

Mr. BYRD. No, Mr. President.

I thank the distinguished majority whip and I wish him a good night and pleasant Sunday and hope to see him again on Monday but not as early as this morning.

Mr. SIMPSON. Indeed I share that view. It has been a pleasure working with the Democratic leader.

RECESS UNTIL 11:30 A.M., MONDAY, SEPTEMBER 29, 1986

Mr. SIMPSON. Mr. President, in accordance with the previous order, I move that the Senate stand in recess until 11:30 a.m. on Monday, September 29, 1986.

The motion was agreed to, and at 2:21 a.m., the Senate recessed until Monday, September 29, 1986, at 11:30 a.m.