SENATE—*Friday, October 3, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:30 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.

Speak unto the children of Israel, saying, "in the seventh month, in the first day of the month, ye shall have a sabbath, memorial of blowing of trumpets, a Holy convocation."—Leviticus 23:34.

Baruch Ha Shem—praise the Lord! God of Abraham, Isaac, and Israel, this evening candles will be lit in devout homes all over the world celebrating Rosh Hashanah—10 days of solemn remembrance for the Jewish community. We thank You, Mighty God, for the model of Godly leadership and deliverance Moses gave history—and for the legacy left us by Your Old Testament giving universal hope for redemption by a god of justice, love and truth. Bless Your people, as they spend these days in solemn penitence, anticipating Yom Kippur—the day of atonement. Praise the Lord!

And, God of perpetual renewal, energize tired bodies here today, renew weary minds, calm raw nerves, and enable Your servants to get done everything they possibly can. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished acting majority leader, Senator PAULA HAWKINS, of Florida, is recognized.

SCHEDULE

Mrs. HAWKINS. I thank the distinguished President pro tempore for the example he sets for us by opening our sessions every day. I know that our bodies are tired.

Mr. President, the majority and minority leaders have standing orders this morning of 10 minutes each. We will have routine morning business not to extend beyond the hour of 9:45, with Members permitted to speak therein for not more than 2 minutes each.

At 9:45, the Senate will resume consideration of House Joint Resolution 738, the continuing resolution. Votes can be expected throughout the day in relation to this measure.

Also, it is the intention of the majority leader, if time permits, to turn to any of the following items: S. 2792, FIFRA. One vote is expected on that.

S. 2045, the FTC. Hopefully, that will be by unanimous consent.

Conference reports on intelligence authorization, bankruptcy, Export-Import Bank, technology transfer, and the handicapped bill.

For Senators listening, or their staffs, votes can be expected to occur throughout the day. It is the majority leader's hope to recess the Senate by 6 p.m.

DRUG EDUCATION AND COCAINE

Mrs. HAWKINS. Mr. President, it has been said, rather wisely I think, that an ounce of prevention is worth a pound of cure. That is one of the reasons that I am such an enthusiastic supporter of drug education as a weapon in fighting the drug threat. It is far cheaper, and more effective, to provide drug education and treatment—and to work on prevention—that it is to build jails to confine drug users and drug dealers.

As part of an education campaign, we need to focus more attention on cocaine, regarded by many experts as the most addictive and most destructive drug to date. People on cocaine resort to all kinds of tricks to acquire the drug. They are not beyond lying, cheating, or stealing to get the money to buy drugs. They are devious and scheming, with little regard for those who may be hurt in the process. Cocaine destroys the moral fiber of the user.

While cocaine is at the forefront of the drug invasion, there are now more drugs of higher quality being sold at lower prices on American streets than ever before. These drugs are more dangerous than ever because their potency is higher than anytime previously. Once upon a time it took a whole marijuana joint to produce a drowsy euphoria.

Now marijuana contains three times the active ingredient it did 10 years ago. Cocaine was once only 20-percent pure. Today it is 80 percent. And crack, a smokeable form of cocaine, delivers 10 times the punch of snorting the powder.

One of my constituents, Robert Ingram, is familiar with "free basing"—reducing cocaine to a smokeable form—and its effects. He was both a cocaine user and dealer. He spent 26 months in Federal prison in Florida and then was sent to a drug treatment center for rehabilitation. Mr. Ingram talks about "free basing" parties—what goes on there and the aftermath. "Free basing"—he relates—creates a false feeling of grandeur, illusions of wisdom, sexual prowess and infinite power. These sensations can be followed by anxiety, paranoia and hallucinations. Once the drug has been consumed, the user is left in a depressed state, crawling on the floor in a desperate search for one last crumb of cocaine for a final hit. Just one more hit. One hit is too many and a thousand are not enough.

A "free-basing" party begins usually with one gram of cocaine, which may cost $100. The party ends when all the cocaine has been consumed, the users have expended all their cash to buy more and all credit has been exhausted. A "free basing" cocaine party may start on a Monday and run through Friday or the weekend. A party of that length may cost several thousand dollars. Nothing, Mr. Ingram continues, is more depressing than the depression of the "free base" user when all the cocaine is gone and there is no more money.

At this point, nothing is sacred. Chicanery, deception and crime are all within the boundaries of finding money to buy more cocaine. "Free basers" will continue this cycle until their assets are gone and they are in the gutter. In this process, homes have been lost, careers fallen by the wayside, families broken up, and health wrecked. Life is the pits. Mr. Ingram should know—he's been there. And now he's on the long road back.

Cocaine shows no favorites. Counted among its victims are the illiterate, the famous and the unknown. Cocaine is an equal opportunity drug. It destroys all who use it without discrimination as to sex, color or national origin.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The able and distinguished acting Democractic leader, Senator JOHN STENNIS, of Mississippi, is recognized.

Mr. STENNIS. I thank the Chair.

Mr. President, we have with us the distinguished Senator from Wisconsin [Mr. PROXMIRE]. I ask that he be recognized by the Chair at this time for a presentation he has to make which will consume no more than 5 minutes.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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

SAY GOODBY TO STAR WARS AS A PROTECTOR OF THE WHOLE NATION

Mr. PROXMIRE. Mr. President, there has been consistent and widespread skepticism in the scientific community that the strategic defense initiative or star wars could ever work. There has been almost universal conviction that it could not work as President Reagan conceives it and advances it with the American public. The President has sold SDI as a system that would defend our country including our urban population from nuclear attack by the Soviet Union. A recent article in the New York Times by Philip Boffey documents in detail a technical obstacle that puts the final coup-de-grace on the President's vision of an SDI that would effectively protect our cities. The Boffey article finds the limitations of computer software as the achilles heel of any comprehensive national star wars defense. Boffey contends that "the software problem is the first technical roadblock serious enough to force a major realignment in the original aspirations for strategic defenses." In the judgment of computer experts this will not only make the difficult technical problem even more difficult. It will force the star wars system to sharply limit its objectives. In effect, realists will forget any comprehensive American defense of our cities. If they still support star wars at all, they will support it as a system that might be useful in protecting missile sites and command centers. To the extent it advanced that purpose it would strengthen the credibility of the United States deterrent. In doing so, however, it would not significantly threaten the Soviet deterrent.

One reason for the gloom overhanging the President's vision of an astrodome to protect American cities is the fact that while researchers have made some breakthroughs in developing the hardware for star wars, the software for the essential computer coordination and direction of a comprehensive star wars system is progressing very slowly. What is worse, the outlook for faster progress is bleak. In fact, the Defense Department and its major defense contractors lag behind nonmilitary leaders in their software. The only solace is that the Soviet Union is literally decades behind the United States.

Why is this problem of developing a computer software system that can coordinate a comprehensive antimissile defense so very difficult? One answer, Mr. President, is that software does not depend on solving a particular problem in perfecting or increasing the velocity of a laser beam or increasing the accuracy and speed of a mechanical response to a speeding missile. Software requires the day-after-day decision of human beings who are confronted with a dazzling array of variables that require adjustment, rapid-fire change on a series of different fronts. It is the kind of challenge that requires constant testing under realistic conditions. For instance, in a much simpler and easier problem, software failed in the first shuttle flight, although it has been tested for 30,000 hours. Software must be tested repeatedly. How can we make this kind of comprehensive test of star wars under anything like realistic conditions and make it over and over again? The only kind of test that would have any significance for a truly comprehensive star wars defense of this country's major cities would be an all out nuclear attack. Mr. President there will be only one such test. And star wars would have to work perfectly or nearly perfectly the first time. After all, the National Academy of Science has told us that if only 1 percent of the Russian nuclear arsenal should strike American cities, there would instantly be between 35 and 55 million dead Americans. We would be devastated as an organized society.

Mr. President, in all fairness star wars officials recognize this problem. They have acted on it. Last year they called in a group of computer experts to review their problem. The panel of experts decided that the model the star wars people had been working on up to that point would demand too much sophistication and would prevent adequate testing. So what did they recommend?

They told the star wars officials to forget the single, tightly controlled, closely related system that would protect the entire country. Instead they proposed that star wars proceed with a number of loosely combined, largely independent, and separate operations. The benefits were that the software could be written in smaller units. It would be less complex. It could be independently tested. But there was a price. Senators could not exchange information about targets and decoys. This would put more emphasis than ever on individual weapons and sensors because they would have to function on their own. And, of course, a comprehensive protection of the entire Nation was gone.

To its credit, the star wars officials have accepted this advice. They are pushing the SDI Program ahead now on the basis of the computer experts advice. In a sense, star wars has been transformed. It will now be virtually impossible for it to provide anything like comprehensive national protection for the entire country or its cities. Philip Boffey, who wrote this article for the New York Times, has described a true revolution in star wars, that almost no one in the public and very few Members of the Congress have caught up with. There is still a chance that this system may become a useful way of helping protect command centers and missile sites. But there now seems to be no prospect that it can ever provide anything remotely like SDI as the protector of our Nation that President Reagan has sold to much of the American people.

Mr. President, I ask unanimous consent that the article to which I referred in the New York Times edition of September 16 be printed at this point in the RECORD.

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

SOFTWARE SEEN AS OBSTACLE IN DEVELOPING "STAR WARS"

(By Philip M. Boffey)

WASHINGTON, September 15.—President Reagan's proposed strategic defense against ballistic missiles has encountered a technical obstacle that will almost certainly limit its shape and performance—the prodigious difficulty of developing computer software to manage the course of a battle.

While most of the technical debate over the feasibility of the President's program has focused on its exotic weapons and sensors, it is now becoming clear, computer experts say, that any large-scale cluster of weapons and sensors will have to be organized and shaped in accordance with the limitations of computer software.

As a result, strategic defense officials are being forced to abandon their original expectations for a tightly coordinated defense and are moving instead toward a concept of loosely coupled clusters of battle stations that will operate with considerable autonomy.

The change will inevitably produce a less efficient defense, computer experts say, and will increase the demands imposed on the system's sensors and weapons, making an already difficult technical challenge even more difficult. The software problem is the first technical roadblock serious enough to force a major realignment in the original aspirations for strategic defenses.

Some experts contend that even the realignment will not solve the software problem.

By "software" the experts mean the huge array of programs, or instructions, that will operate the computers running the whole system, officially called the Strategic Defense Initiative and popularly known as "Star Wars."

The nightmare envisioned by some experts is that undetected flaws, or "bugs," in the software might cause all or part of the system to malfunction in a crisis. Just as the first launching of the space shuttle was halted in 1981 because problems in the software programs caused its computers to fall out of synchronization, these experts warn, so might a strategic defense shut down unexpectedly when first called upon to block thousands of Soviet missiles streaking toward America's oil.

Others worry that flaws in the software might cause a highly automated Star Wars system to fire by mistake at a harmless target, perhaps triggering a crisis that could escalate to nuclear holocaust. There is also the fear that the computer programs would be vulnerable to sabotage, espionage and even hostile takeovers by Soviet master-

minds, who might penetrate the software electronically, take control of it and turn the system to their own uses.

The software problem has forced a virtual revolution in high-level thinking about how to build a defensive system in space. Moreover, it has invalidated the initial plans proposed by 10 industrial teams, and has stimulated a sharp increase in funding for the battle management aspects of the program, from roughly $90 million in the fiscal year ending Sept. 30 to perhaps double that projected for the coming year.

"I think it's the biggest technical problem for the entire program," said Lieut. Col. David R. Audley of the Air Force, assistant director of battle management for the Strategic Defense Initiative Organization, which manages the research program.

Although technologists are hoping for major breakthroughs in developing other components of the defensive system, such as new sensors and weapons, the prospects for major advances in software development are deemed negligible.

The field as a whole is progressing very slowly and, to make matters worse, the Defense Department and its major aerospace contractors are decades behind leaders in the field, according to the Pentagon's own consultants. The only solace, many experts say, is that the Soviet Union lags far behind the West in computer expertise. That may be one reason Soviet officials appear so anxious about the American strategic defense program, some experts suspect.

The software issue has sparked an acrimonious and rapidly widening debate among computer experts.

Those who believe the job is feasible or at least worth further study include Frederick P. Brooks Jr., professor of computer science at the University of North Carolina, who built the software for the IBM 360 family of computers; Victor Vyssotsky, executive director for information sciences research at A.T.&T. Bell Laboratories, who has helped develop large software programs for the telephone system and for a previous missile defense; Solomon J. Buchsbaum, executive vice president of Bell Labs, who is a key Government adviser on technical issues; John McCarthy, professor of computer science at Stanford University, who developed LISP, a major programming language for artificial intelligence research; and two panels of computer experts convened by the Defense Department.

The panelists included such experts as Danny Cohen, director of the systems division at the University of Southern California's Information Sciences Institute; Charles A. Seitz, professor of computer science at the California Institute of Technology; and Richard Lipton, professor of computer science at Princeton University.

"I don't think there's any question that it can be done," said Dr. Seitz.

However, those who believe the likelihood of success is very small include Herbert Simon, the only computer scientist to win a Nobel Prize; John Backus, the inventor of FORTRAN, a major computer programming language; David L. Parnas, who was called in by the Defense Department to review the software problem because he was considered one of the world's leading authorities; several experts working for the Digital Equipment Corp., a major computer manufacturer, including James J. Horning, Greg Nelson and David Redell, who have issued lengthy critiques; and Robert Taylor head of Digital's systems research center who formerly headed computer research programs for the Defense Advanced Research Projects Agency, the Pentagon's chief supporter of breakthrough computer research.

"I think it's pretty clear that it can't be done," Mr. Taylor said. "The goals of the S.D.I. put demands on software that are just absurd in terms of the state of our knowledge."

The critics generally argue not only that all large software programs contain undetected "bugs" or flaws that could cause catastrophic failure but also, and perhaps most important, that it will be impossible to test and "debug" the Star Wars software thoroughly short of nuclear war.

But the optimists retort that the computing job can be broken up into do-able parts and that the software for these various parts can be tested thoroughly enough to provide reasonable confidence that the entire system would work.

The two sides in the Star Wars debate often appear to be talking past each other. Those who say that the software cannot be developed are usually talking about the software needed to provide a near-perfect defense for the entire population. Those who say that the software may be feasible are often thinking about a less comprehensive defense that could tolerate more software errors.

The skeptics appear to outnumber the optimists, in part because critics of the Star Wars program have been more vigorous in enlisting allies than have supporters of the program. Some 14 computer specialists at A.T.&T. facilities have signed a letter warning that the Star Wars system might contain 10,000 errors to its software, some of which might cripple the system.

Some 30 other computer experts, including 14 who chair university computer departments and several who have won top computer awards, have signed a petition calling Star Wars technically infeasible in this century "with known or anticipated techniques," no matter how much money is spent on it.

Regardless of how it is organized, computers and the software programs to run them would be needed at virtually all stages of the Star Wars program, including space platforms, weapons, sensors, ground stations and airplane units. These would not, for the most part, be giant "mainframe computers," but rather arrays of tiny electronic chips wired together to perform high-speed calculations where needed in the system.

Such computers would aim the sensors in the general direction from which an attack might emerge. They would process the enormous flood of data generated by these sensors, pouring in at the rate of millions of data elements per second, to look for evidence of missiles in flight against a background of normal signals. They would try to distinguish actual missiles from decoys, and would calculate the trajectories for enemy missiles that must be destroyed. They would aim defensive weapons, such as laser beams or chemical rockets, at the oncoming missiles, assess which missiles have been destroyed and re-aim the weapons at new targets. Finally, they would pass on needed information so that the next layers or battle groups in the defense could challenge the surviving missiles.

The computers would also scan the sensor data for signs of attack on the Star Wars system itself, firing off weapons to beat back any attack on itself. Some battle stations would have to respond within minutes; the whole engagement would last perhaps a half hour.

The computer "hardware" needed to perform these feats, the tiny chips and arrays capable of performing the high-speed calculations, is not yet in hand, but most experts expect that it will be. Their optimism is based on incredible advances in hardware development that have produced generation after generation of smaller, faster and cheaper computers.

The software to operate the whole system, however, is a far more daunting problem. Large software programs are typically written by thousands of designers and engineers who first try to determine what situations the software must respond to, then write detailed instructions in computer language to specify what calculations should be performed and what orders issued by the computers under various circumstances. Such programs are repeatedly tested in a process that may take years and even decades. But even after years of operation, undetected flaws sometimes emerge to cause the computer system to fail or perform in unanticipated ways. The software whose failure forced postponement of the first shuttle flight had been tested for more than 30,000 hours.

The chief difficulty in writing the software for Star Wars, most experts agree, is the inability of the human mind to foresee precisely what sort of attack a strategic defense might have to cope with years from now. The world has never experienced an all-out nuclear attack, yet the designers of the software must anticipate the weapons and decoys that will be fired, the tactics that will be used and what effect an all-out nuclear attack would have on the sensors and weapons of the Star Wars system itself.

"If it's not in the software, it's not in the implementation of the system," said Colonel Audley. "That's what makes the software so hard."

The size and complexity of the proposed strategic defense make the software task especially difficult. The Navy's new Aegis air defense system for ships, for example, is only designed to track several hundred targets at a time and is experiencing difficulties doing that. Star Wars might have to handle 30,000 to 300,000 missiles and decoys, according to official estimates.

The task will require enormous software programs, containing 6 million to 25 million lines of code or computer instructions, according to official estimates, or up to even 100 million lines, according to a widely cited conjecture. These estimates are not so far beyond all previous experience that the task can be judged impossible. The nation's telecommunications network, for example, uses over 40 million lines of software code, of which about 1.3 million run the electronic switching system that routes calls, according to officials of A.T.&T.

But the sheer size of the software would greatly increase the chances of error, computer experts say, because large programs have more places for bugs to lurk undetected, and more opportunity for one part of the software to work in opposition to another.

The likelihood of error would be further increased because the software would have to be updated continually, to provide defenses against new Soviet weapons of tactics and to incorporate new American weapons or sensors as they are developed. Any time that a change is made in complicated software experts say, there is a risk that it will introduce new errors.

The traditional way to determine whether software will perform reliably is to test it in

action, something that is clearly impossible for Star Wars. So the software designers will be forced to rely on partial tests and on computer simulations of an all-out attack.

Experts on both sides agree that the strategic defense would not require software that is flawless or error-free, a feat that all agree is impossible in such a large program. But the system would need software that contains no catastrophic errors and that can recover from errors and continue to function.

The software problem has forced a drastic reversal of the whole approach to determining an "architecture" for the Star Wars system, from an initial concept that a system could be tightly organized under centralized computer management to a current realization that a looser coupling of more independent components is more feasible.

The first close look at the software issues was made as part of the Defensive technologies Study, headed by Dr. James C. Fletcher, now head of the National Aeronautics and Space Administration, which was set up to assess the technical prospects for carrying out the President's plan. The battle management panel of that study asserted in 1984 that developing and maintaining the software would be a far more complex task than had ever been accomplished "in the production of civil or military software systems."

The only way to perform the job effectively, it warned, would be to design the software as an integral part of the whole system from the start, not as something to be added on at the end, after all the sensors and weapons have been developed, the usual approach of Pentagon contractors.

The report implied that components would have to be linked so that they could help each other identify targets and inform one another which missiles were still on the way and which has been destroyed. The report envisioned a master track file, under computer control, that would provide "birth to death" tracking of all potentially threatening objects.

That idealized model soon became an unofficial guide for 10 manufacturing teams that later submitted proposals to the Government on structuring a Star Wars defense. The teams generally produced tightly coordinated systems that called for close integration of all the weapons and sensors under computer command. But they paid scant attention to how the computers might do the job.

Last year the strategic defense office called in another group of computer experts to review the problem again. That nine-member panel, headed by Dr. Cohen, concluded in a report last December that the computing capabilities could be developed, but only if there was a revolution in the way that the Defense Department and its contractors went about their business.

The panel judged that the model described in the Fletcher report and initially proposed by the aerospace companies would demand too much sophistication from the software and would prevent adequate testing.

The key advice of the panel was that developers should give up the notion of a tightly coupled "monolithic" system capable of coordinated action on a grand scale and should think instead of loosely coupled battle groups, each operating with substantial autonomy, independent of the rest of the system. That way, the software could be written in smaller units that would be less complex and more easily tested.

Such an arrangement would offer fewer chances for sensors and weapons to exchange information about targets and decoys and would probably eliminate "birth to death" tracking of targets. As a result, the individual weapons and sensors would have to be even more effective than previously expected, because they would have to perform more of the calculations on their own.

The panel's advice has been taken to heart by Star Wars officials. Lieut. General James A. Abrahamson, director of the strategic defense program, promptly endorsed "the spirit and content of the report" and called for its "rapid implementation." Similarly, Colonel Audley said the development of software "without a doubt" should be the driving force in shaping the architecture of the whole system.

But Colonel Audley acknowledged that such a turnabout would not be easy. "We have so little successful history of having done the software right first and letting the hardware follow behind," he said. "And every time you turn around in this program someone has a hardware solution. You've got to keep chasing them off."

□ 0940

Mr. JOHNSTON. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield.

Mr. JOHNSTON. Mr. President, I simply would like to commend the Senator for his excellent speech on this subject and many other subjects. I think the fund of knowledge of the Nation and certainly of the Senate is enriched by the good work of the Senator from Wisconsin. I think he has helped to bring light to this subject of star wars through the remarks he has made over the past many months.

Mr. PROXMIRE. Mr. President, I thank my good friend from Louisiana. Nobody has been so alert and sensitive and informative on this subject as he has been. He has been our leader. He has taken charge and done, I think, an outstanding job.

MYTH OF THE DAY: MEDICARE'S PARTICIPATING PHYSICIAN PROGRAM DOESN'T WORK

Mr. PROXMIRE. Mr. President, the myth of the day is that Medicare's Participating Physician Program is not working in Wisconsin. The truth is that a record number of Wisconsin physicians have signed contracts with Medicare under the Participating Physician Program.

In fact, Wisconsin now ranks 10th in the Nation in the number of physicians who have signed contracts with Medicare. And that is good news for Wisconsin's senior citizens, because it translates into lower out-of-pocket costs for health care.

It has always been in the financial interest of the elderly to seek out physicians who would accept assignment under Medicare. When a physician accepts assignment, he or she does not require the senior citizen to pay the full charge for the services they have received. Instead, the physician accepts Medicare's determination of the amount which constitutes a reasonable charge for these services. Medicare then pays 80 percent of that reasonable charge and the senior citizen is only responsible for their 20 percent copayment requirement.

For the elderly, this is clearly a better deal than being forced to pay the full charge of the physician. But in the past, it has been very difficult for the elderly to determine whether a physician would accept assignment on the cost of the care they received.

The Participating Physician Program, created by the Congress 3 years ago, offered a simple alternative. Physicians were provided an opportunity to sign contracts with Medicare by which they agreed to accept assignment on all Medicare claims for a full year. This eliminated the guesswork for the elderly. By choosing a participating physician in their community whom they trusted, they had a guarantee that the physician would accept assignment on the claim.

While there have been many skeptics regarding the value of the Participating Physician Program to physicians, it is clear that in Wisconsin more physicians than ever are joining the program. And it is important that these physicians be given the recognition they deserve for the financial sacrifice they are making on behalf of our senior citizens. It has become all too easy to blame physicians for their contributions to escalating health care costs and not give them credit for the contributions they have made.

Wisconsin's physicians deserve credit for making Wisconsin 10th in the Nation in its percentage of participating physicians. They are proving that the Participating Physician Program can work, and is working, in many areas of this country.

OPENING NEW JOB CLASSIFICATIONS FOR WOMEN IN UNIFORM

Mr. PROXMIRE. Mr. President, I have spoken about the need to broaden the assignment opportunities for women in the military. Today, the distinguished Senator from Maine and I are introducing a bill designed to do just that. I am very pleased to be introducing this bill with Senator COHEN, who, as a member of the Armed Services Subcommittee on Manpower and Personnel, is an expert on our military assignment policies and who has has a long-standing interest in the assignment of our female soldiers. Senator COHEN gave an excellent speech before this body on May 2 of last year, which outlines some of the cumbersome and conflicting as-

signment policies we are trying to eliminate with this legislation.

This bill speaks to each branch of the armed services, allowing each to expand the assignment of women in combat support positions. The Air Force and, more recently, the Army have made good progress in opening up positions for female soldiers. At the same time, all the services have tended to play it safe by staying within a narrow interpretation of combat restriction laws, and regulations. With this bill we would send a signal to military policy makers that they can loosen the complex and arbitrary constraints on the assignment of women and still conform with the combat restriction laws.

With regard to the Army, this bill would provide for the permanent assignment of women to all units which have as their mission the direct support of combat units. In the Navy, it would open up the ships of the Mobile Logistic Support Force, and in the Air Force, it would make more reconnaissance, training, transport, and tanker aircraft suitable for the assignment of women.

Women make up 10 percent of our All-Volunteer Force. There are well over 1 million female veterans and over 300,000 women now serving in the Active and Reserve Forces. A recent Department of Defense publication states that, "As officers and enlisted personnel filling traditional and nontraditional roles, women serve in a wide variety of jobs with professional skill, unswerving dedication and well-deserved pride." In fact, the DOD has listed women as capable of holding 88 percent of military positions, yet only 63 percent are open to them. We are wasting a valuable personnel resource. It is time for our assignment policies to reflect the excellent contributions of our female soldiers.

Mr. President, I ask unanimous consent to have the bill printed in the RECORD.

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

S. 2906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ASSIGNMENT OF FEMALE MEMBERS OF THE ARMY TO COMBAT SUPPORT UNITS.

(a) IN GENERAL.—Chapter 343 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 3549. Female members: assignment to combat service support units and combat support units

"The Secretary of the Army shall provide for the more efficient utilization of female members of the Army by providing for the permanent assignment of such members to all units of the Army which have as their mission the direct support of combat units.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3549. Female members: assignment to combat service support units and combat support units.".

SEC. 2. CLARIFICATION OF TYPES OF VESSELS ON WHICH WOMEN MAY BE ASSIGNED TO DUTY

The last sentence of section 6015 of title 10, United States Code, is amended by striking out "and vessels of a similar classification not expected to be assigned combat missions" and inserting in lieu thereof "combat support vessels (including mobile logistic support-force vessels), and vessels of a similar classification".

SEC. 3. AIRCRAFT TO WHICH WOMEN MAY BE ASSIGNED

The text of section 8549 of title 10, United States Code, is amended to read as follows:

"(a) Female members of the Air Force may not be assigned to duty in aircraft engaged in combat missions.

"(b) The prohibition in subsection (a) does not apply to female members of the Air Force designated under section 8067 of this title (or appointed with a view to designation under that section) or to female members assigned to duty in reconnaissance, training, transport, or tanker aircraft.".

Mr. COHEN. Mr. President, today I am very pleased to join my colleague, Senator PROXMIRE, in introducing legislation to encourage the greater utilization of women in our military services by expanding the opportunities for women to serve in combat support and combat service support positions. Let me emphasize that the bill does not repeal or modify the combat exclusion laws.

Today, in every service branch, opportunities for career development, promotion and access to education and training are all, in some manner, denied to women exclusively on the basis of gender. Despite the progress which has been made, artificial barriers continue to confront women seeking military careers.

What we need to see is more women promoted and given the opportunity to serve in decisionmaking roles. We need to disprove the view that all military positions are appropriate for men, but that only some are appropriate for women.

Every position should be available to every individual who possesses the necessary experience, skills, qualifications, and motivation, regardless of gender. Women and men who have chosen to devote their lives to serving their country deserve their Nation's commitment to ensure them equal opportunity and consideration.

The legislation Senator PROXMIRE and I are introducing today is an important step in that direction. While military women in all branches currently serve in certain combat support or combat service support positions, there is little consistency among the services regarding the ways in which women are allowed to participate. Moreover, many of these support positions remain closed to women.

The role of women in the military and our obligation to increase the opportunities available to them is much too important to ignore. While many of the barriers obstructing women's advancement in the military have recently been broken down, other barricades remain in place. This legislation is intended to tear down many of those barricades. I urge my colleagues to join us in supporting this important legislation.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

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

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The PRESIDENT pro tempore. The clerk will state the pending business.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate resumed consideration of the joint resolution.

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

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

The legislative clerk proceeded to call the roll.

Mr. STENNIS. 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.

AMENDMENT NO. 3164

Mr. STENNIS. Mr. President, I have here something like 20 amendments that have been cleared and ready for action. I send an amendment to the desk for Senator NUNN of Georgia. I ask for its immediate consideration.

The PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. NUNN, proposes an amendment numbered 3164.

Mr. STENNIS. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Section 301 of title 23, add the following: "*Provided*, That certain demonstration projects, as approved by the Secretary, specified in section 129 may have tolls applied".

Section 129 of title 23, add the following paragraphs:

"(j) Notwithstanding section 301 of this title the Secretary shall permit Federal participation in not more than four projects in the States of Florida and Georgia to demonstrate the feasibility and practicality of construction of toll highways to meet capacity needs in high growth areas: *Provided*, That

Federal participation in any toll highway project under this subsection shall not exceed 35 percent of total project cost and further provided that Federal aid funds used in a toll highway project under this subsection may be from any Federal aid system other than the interstate system funded under section 104(b)(5)A": *Provided further,* That this provision shall apply only to non-interstate highways for new highway facilities or for projects that expand capacity on existing facilities and the revenues raised by such tolls may only be used for the construction, reconstruction, maintenance, and operation of the tolled-facility.

Mr. STENNIS. Mr. President, I have here a very limited explanation and description of this amendment.

It is a very limited toll amendment permitting demonstration of four projects in only two States—Florida and Georgia (Georgia 400).

It would permit the combination of toll financing with regularly apportioned Federal highway funds. There would be no increase in Federal highway funding available to any State because of this amendment. It would only permit the use of existing funds with revenues raised by tolls.

It would apply only to construction, operation, and maintenance of new, noninterstate or existing highways that expand capacity.

Federal funds would be limited to 35 percent of the project's cost.

It is supported by administration and several highway user groups.

It has been cleared by Senators STAFFORD, chairman, and BENTSEN, ranking member of Environment and Public Works Committee.

It conforms to Chairman HATFIELD's criteria established for introduction of amendments to the continuing resolution; it does not change national highway policy nor increase spending.

It is cosponsored by Senator CHILES.

Budgetary constraints on the Federal-aid Highway Program make it necessary for States to explore new financing mechanisms that provide flexibility to address traffic congestion problems and meet demand for new highway capacity.

Mr. STENNIS. Mr. President, this amendment has been cleared for passage.

Mr. HATFIELD. Mr. President, this amendment has been cleared on this side of the aisle. I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3164) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3165

(Purpose: Require FTC to make two reports in fiscal 1987 on predatory pricing)

Mr. STENNIS. I have another amendment. This is on predatory pricing, by the Senator from South Carolina [Mr. HOLLINGS]. I send it to the desk.

The PRESIDENT pro tempore. The clerk will report.

Mr. STENNIS. It is in order, and I ask for its immediate consideration.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. HOLLINGS, Mr. FORD, and Mr. KASTEN proposes an amendment numbered 3165.

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

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

The amendment is as follows:

At the appropriate place in the joint resolution, insert:

SEC. . REPORT ON PREDATORY PRICING PRACTICES.

The Federal Trade Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives the information specified in subsection (b) of this section every 6 months during fiscal year 1987. A report containing such information shall be sumitted when the Commission submits its annual report to the Congress during such fiscal year, and such report may be included in the annual report. A separate report containing such information shall be submitted 6 months after the date of submission of any such annual report. Each such report shall contain such information for the period since the last submission under this section.

(b) Each such report shall list and describe, with respect to instances in which predatory pricing practices have been suspected or alleged—

(1) each complaint made, orally or in writing, to the offices of the Commission;

(2) each preliminary investigation opened or closed at the Commission;

(3) each formal investigation opened or closed at the Commission;

(4) each recommendation for the issuance of a complaint forwarded by the staff to the Commission;

(5) each complaint issued by the Commission;

(6) each opinion and order entered by the Commission;

(7) each consent agreement accepted provisionally or finally by the Commission;

(8) each request for modification of an outstanding Commission order filed with the Commission;

(9) each recommendation by staff pertaining to a request for modification of an outstanding Commission order; and

(10) each disposition by the Commission of a request for modification of an outstanding Commission order.

Such report shall include copies of all such consent agreements and complaints executed by the Commission referred to in such report. Where a matter has been closed or terminated, the report shall include a statement of the reasons for that disposition. The descriptions required under this subsection shall be as complete as possible but shall not reveal the identity of persons or companies complained about or those subject to investigation that have not otherwise been made public. The report shall include any evaluation by the Commission of the potential impacts of predatory pricing upon businesses (including small businesses).

Mr. HOLLINGS. Mr. President, this amendment requires the Federal Trade Commission [FTC] to make two reports on predatory pricing during fiscal year 1987. The distinguished senior Senator from Kentucky [Mr. FORD] added a similar amendment to the FTC Authorization Act when the bill was before the Senate on July 25, 1985. Similar provision was made in the version of bill approved by the House of Representatives. In addition, the conference committee adopted this provision during its negotiations on March 5, 1986, but that conference now appears hopelessly deadlocked.

Mr. President, predatory pricing is an issue which affects small business deeply and has been chosen as a priority issue by the Small Business Legislative Council consisting of 88 small business trade associations, as well as the National Association of Retail Druggists and the National Grocers Association.

This amendment is simply to require a periodic FTC report to Congress on the FTC response to predatory pricing complaints. These reports will assist Congress in its oversight function. It has been reported to us in testimony submitted for the FTC hearing record that the National Grocers Association is engaged in a struggle to insure that antitrust law enforcement promotes fair and effective competition. An FTC periodic report will further inform us about this situation.

Mr. STENNIS. I move adoption of the amendment.

Mr. HATFIELD. Mr. President, the amendment has been cleared on this side of the aisle and I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3165) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3166

(Purpose: To provide for a transfer of funds to the Institute of American Indian and Alaska Native Culture and Arts Development, and for other purposes)

Mr. STENNIS. Mr. President, I have another amendment here, this one offered by Senator MELCHER. This relates to American Indian arts. I send

the amendment to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. MELCHER and Mr. BRADLEY, proposes an amendment numbered 3166.

Mr. STENNIS. Mr. President, I move we dispense with further presentation of the amendment at this time.

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

The amendment is as follows:

At the end of the joint resolution, add the following:

SEC. . Notwithstanding any provision of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act, the amounts appropriated for fiscal year 1987 for the Bureau of Indian Affairs for the Institute of American Indian Arts shall be available for use under part A of that Act and—

(1) that Act shall be implemented in a reasonable period of time and shall be fully implemented by no later than October 1, 1987,

(2) until the earlier of—

(A) October 1, 1987, or

(B) the appointment and confirmation of a majority of the members of the Board of trustees of the Institute of American Indian and Alaska Native Culture and Arts Development under section 1505(a)(1)(A) of that Act,

the Secretary of the Interior shall have the authority conferred upon such members under that Act, and

(3) until the earlier of—

(A) October 1, 1987, or

(B) the appointment of a President of such Institute under section 1508 of the Act,

the Secretary of the Interior shall have the authority conferred upon the President of such Institute under that Act.

Mr. MELCHER. Mr. President, this amendment is necessary to correct a problem in the Native American Art and Culture Act which is now before the President as an amendment to the Higher Education Act. Since the effective date of the Art and Culture Act is October 1, 1986, and since the board members and President of the new Institute have yet to be appointed by the President and confirmed by the Senate, there is a gap in authority to operate the Institute.

The amendment would allow the Secretary to serve both the functions of the board and the President up to 1 year or until these appointments are made, whichever is earlier. The amendment also clarifies that funds appropriated for fiscal year 1987 for the Institute of American Indian Art shall be used to fund the Art and Culture Development Institute.

I understand that the amendment is acceptable to the managers of the continuing resolution.

Mr. STENNIS. I move adoption of the amendment, Mr. President.

Mr. HATFIELD. Mr. President, it has been cleared on this side and I move its adoption

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3166) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3167

Mr. STENNIS. Mr. President, I present for consideration now an amendment—it has been cleared—by Senator LEAHY regarding Superfund. I send the amendment to the desk for presentation to the Senate.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. LEAHY, proposes an amendment numbered 3167.

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

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

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . Notwithstanding any other provision of this joint resolution, for an additional amount for, "Environmental Protection Agency, Hazardous substance response trust fund", $600,000,000, for necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510: *Provided Further*, That of the amounts appropriated under this heading in Public Law 99-160, $600,000,000 are rescinded.

Mr. LEAHY. Mr. President, Senator LAUTENBERG and I have introduced an amendment to the continuing resolution. This is a technical amendment, but is is also a very important amendment.

In last year's HUD-independent agencies appropriation bill, we appropriated $900 million for the Superfund Program. We fenced those funds. That is, we provided that they could not be spent unless Superfund was amended. Since Superfund had never been amended, this provision meant that these funds could not be spent until the Superfund reauthorization was enacted. We included these provisions at the request of the authorizing committees which feared that if all of the Superfund funding were immediately available, the urgency to resolve the Superfund legislation would dissipate.

It took longer than expected to reauthorize the Superfund Program. As a consequence, twice during this year we have had to release funds to keep the program operating; $600 million of the funds appropriated have not been released. There are experts within the administration and the GAO who believe that since these funds are derived from a trust fund which has no funds in it the authority will lapse on September 30, 1986.

There are serious questions about the correctness of this understanding of trust fund law. However, in order to ensure that these funds are made available, we are proposing in this legislation to rescind $600 million of 1986 funds and appropriate an additional $600 million for Superfund in 1987. From a budget point of view, this action is a wash. However, without this amendment $600 million of funds to clear up hazardous sites would be lost.

Six hundred million dollars is more than the Agency has ever spent in a single year to clean up hazardous waste sites.

Thus these funds are critical to a vital effective Superfund Program.

I urge the adoption of the amendment.

Mr. LAUTENBERG. Mr. President, I rise to join Senator LEAHY in offering this amendment. It simply assures that the money appropriated in fiscal year 1986 for Superfund is not lost to the program. It does not release this sum, but simply preserves it. Due to the delay in reauthorizing the program, only a small portion of the fiscal year 1986 appropriation was ever made available for obligation, and $600 million remains. Unless Congress takes appropriate action at this point, these remaining funds will lapse.

This amendment ensures that these funds do not lapse, and I strongly support it.

Mr. President, with over 900 sites on the national priority list and 99 of these sites in New Jersey, we cannot afford to lose these funds. What this amendment does is, first, rescind the $600 million carryover for fiscal year 1987 purposes, and then, second, reappropriate the $600 million in fiscal year 1987. This assures availability of these funds for the Superfund Program. Without action on the fiscal year 1986 carryover by September 30, all remaining fiscal year 1986 funding will be lost to the program.

The amendment should in no way remove pressure on Congress and the President to enact the Superfund reauthorization. The measure simply ensures that the appropriation does not expire. But in doing so, the amendment does not release for obligation any of the $600 million. The amendment does not, for example, put any funds into the Superfund trust fund either directly or through borrowing authority.

This approach preserves the $600 million appropriation, but keeps the pressure on the Congress to complete its work on the conference report, and on the President to sign a reauthorizing bill.

Mr. President, today's agreement by the tax conferees on the Superfund conference report marks what can be the beginning of a new era of environmental protection.

Now the way is clear for the House and Senate to consider and approve this landmark legislation, after considerable delay and debate.

At this point, attention shifts to the White House. The fate of this bill, now, is in the hands of the President. Will he veto it, or pocket veto it, not even giving the Congress a chance to respond?

The administration has consistently maintained that it will veto any bill with revenues exceeding $5.3 billion in revenues. Further, it has expressed opposition to a broad-based tax, or an oil tax. This agreement announced today contains all three measures. Top administration officials have warned me and others that the veto drums are beating loudly. I have been told that the Treasury Department has issued a statement saying the Department will recommend that the President veto the bill. I have not been able to confirm that.

Before the President takes such action, he should think carefully about the ramifications of a veto. A veto would starve this program and possibly kill it. It would stop work at over 100 Superfund sites by the end of this month. A veto says "no" to new tough cleanup standards. It says "no" to community right to know. It says "no" to radon mitigation, "no" to a leading underground tanks program, "no" to citizen suits, and "no" to many other programs vital to cleaning up our toxic waste sites.

These provisions were the result of almost 3 years of consideration by Congress. What we have today is the potential for a historic step forward. To New Jersey, with its 99 Superfund sites, it means at least $500 million of funding to clean up our abandoned toxic waste sites.

Citizens of New Jersey and other States need to let the President know that he should sign the Superfund bill. The message should be clear. Both Houses of Congress approved Superfund by overwhelming margins. If there is a veto, the President is out of step with the country.

I will be circulating a letter to the President, among my colleagues, asking him not to veto this bill.

Mr. President, the Superfund Program has suffered enough disruption and delay. It has been operating on a series of interim funding measures since the taxing authority expired last September 30. It has been funded at reduced levels. And, it will soon be out of money. Action on this bill must be concluded before we adjourn for the year.

Last March, we passed a $150 million interim funding bill to prevent a shutdown of the program. On August 15, we passed another stopgap interim funding measure designed to avert the crisis for another month, hoping the tax conferees would complete action on the bill. Now we are courting the same crisis in funding for the program. According to a September 22, 1986, letter from EPA Administrator Lee Thomas, work at 114 remedial projects will stop on October 31, 1986, including 16 projects in my home State of New Jersey. And as the Administrator predicted, contract termination notices were sent out on October 1.

It is urgent that we enact the Superfund reauthorization bill. We must act, and we must act swiftly. In the meantime, adopting this amendment is important to assure that the $600 million remaining from fiscal year 1986 appropriations not be lost to the program.

Mr. HATFIELD. Mr. President, the amendment has been cleared on this side of the aisle. I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3167) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3168

(Purpose: To establish the Aviation Safety Commission)

Mr. STENNIS. Mr. President, I have another amendment—it has been cleared—by the Senator from West Virginia [Mr. BYRD] regarding aviation safety. I send that amendment to the desk for presentation to the body.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. BYRD, proposes an amendment numbered 3168.

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

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

The amendment is as follows:

At the end of the joint resolution, add the following new title:

TITLE .—AVIATION SAFETY

SHORT TITLE

SEC. This title may be cited as the "Aviation Safety Commission Act of 1986".

COMMISSION ESTABLISHED

SEC. . (a) There is established a commission to be known as the Aviation Safety Commission (hereinafter referred to as the "Commission").

(b) (1) The Commission shall be composed of seven members appointed by the President no later than 30 days after the date of enactment of this Act.

(2) Appointees to the Commission shall possess extensive experience and expertise at the highest executive levels of public or corporate management.

(3) No member of the Commission shall, at the time of such member's appointment, be an employee or officer of the Federal Government, nor shall any member have been an employee of the Federal Government for at least 3 years before such member's appointment to the Commission.

(4)(A) At least four members of the Commission, including the Chairman, shall not have performed any service or have been involved in any way in any business concern in air commerce or any aviation-related industry for at least 3 years before their appointment to the Commission.

(B) For the purposes of this paragraph, the term "air commerce" has the meaning given to such term in section 101(4) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(4)).

(c) The President shall appoint one of the members to serve as Chairman of the Commission.

(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Four members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f)(1) The Commission shall hold its first meeting within 30 days after the appointment of all members.

(2) The Commission shall meet at the call of the Chairman or a majority of the members.

(g) Members of the Commission shall serve until the expiration of the Commission pursuant to section 3(f) of this Act.

FUNCTIONS OF THE COMMISSION

SEC. .(a) The Commission shall make a complete study of the organization and functions of the Federal Aviation Administration (hereinafter referred to as the "Administration") and the means by which the Administration may most efficiently and effectively perform the responsibilities assigned to it by law and increase aviation safety.

(b) In conducting such study, the Commission shall consider whether—

(1) the Administration has been provided adequate resources and has adequately utilized the resources provided to ensure aviation safety;

(2) the dual responsibilities of the Administration of promoting commercial aviation and ensuring aviation safety are in conflict, and whether such conflict impedes the effective maintenance and enhancement of aviation safety;

(3) the Administration should be reorganized as an independent Federal agency with the promotion, maintenance, and enhancement of aviation safety as the sole responsibility of such agency;

(4) the promotion of commercial aviation should be assigned as a responsibility to another agency of the Federal Government;

(5) airline deregulation has an adverse effect on the margin of aviation safety, in-

cluding a review of whether the practice of airline self-compliance with respect to aviation maintenance standards is an outmoded approach in an environment designed to maximize cost-savings; and

(6) it is feasible to make mandatory certain or all of the safety recommendations issued by the National Transportation Safety Board.

(c) The study conducted under this section shall include findings and recommendations, including any recommendations for legislative action, regarding—

(1) the most appropriate and effective organizational approach to ensuring aviation safety; and

(2) measures to improve the enforcement of Federal regulations relating to aviation safety.

(d) In conducting such study, the Commission shall consult with the National Transportation Safety Board and a broad spectrum of representatives of the aviation industry, including—

(1) air traffic controllers;

(2) representatives of the commercial aviation industry;

(3) representatives of airways facilities technicians;

(4) independent experts on aviation safety;

(5) former Administrators of the Administration; and

(6) representatives of civil aviation.

(e) Within 9 months after the date of enactment of this Act, the Commission shall submit a report on the study conducted pursuant to this section to the President and to each House of Congress. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative and administrative actions.

(f) The Commission shall cease to exist 9 months after the date of enactment of this Act.

POWERS AND ADMINISTRATIVE PROVISIONS

SEC. . (a) The Commission may, for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and publish such reports as the Commission considers appropriate.

(b)(1) Subject to such rules as may be adopted by the Commission, the Chairman, 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 of such title relating to classification or chapter 53 of such title relating to General Schedule pay rates, may—

(A) appoint and fix the compensation of such staff personnel as the Chairman considers necessary, including an executive director who may be compensated at a rate not in excess of that provided for level V of the Executive Schedule in title 5, United States Code; and

(B) procure the services for experts and consultants in accordance with section 3109 of title 5, United States Code.

(2) Any person appointed as executive director pursuant to paragraph (1)(A) of this subsection shall meet the same qualifications required of members pursuant to section (b) of this Act.

(c) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such information as the Commission considers necessary to carry out its functions.

(d) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(e) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) The Commission may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(g) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission may take under this section.

COMPENSATION OF MEMBERS

SEC. . Members of the Commission shall serve without compensation, but shall be reimbursed for travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business and engaged in the actual performance of duties of the Commission.

APPROPRIATIONS

SEC. . There is hereby appropriated for fiscal year 1987, $2,000,000 to carry out the provisions of this Act.

THE AVIATION SAFETY COMMISSION

Mr. BYRD. Mr. President, the amendment I am offering is based on legislation, S. 2417, the Aviation Safety Commission Act, which I introduced in May, and which the Senate passed on September 11.

The need for this legislation was underscored on Sunday, August 31, 1986, by the collision in the skies over Los Angeles of Aeromexico flight 498, carrying 58 passengers and 6 crew members, with a single engine piper Cherokee. Both aircraft plunged to the ground killing everyone on board. To compound the tragedy, the Aeromexico DC-9 crashed into a Los Angeles suburb, damaging or destroying 11 homes, and, according to preliminary estimates, killing as many as 22 residents.

Mr. President, as a consequence of the Aeromexico tragedy, the House has included a provision, section 139, in House Joint Resolution 738 that directs the FAA to initiate rulemaking action to consider the question of requiring the installation and carriage of operating transponders with automatic altitude reporting capabilities in all aircraft operating in terminal airspace. My amendment is directed to a similar concern for aviation safety.

The Aeromexico tragedy is further evidence of the declining margin of aviation safety the Nation has experienced over the past several years. Since 1975, reports of aviation safety incidents—such as near midair collisions, surface operational errors, and crashes—have been occurring more frequently.

For example, in 1975 one aviation safety incident was reported for every 12,805 aircraft departures. By 1980, an incident was reported for every 7,377 departures, a 42-percent increase in the frequency of incidents during the period 1975–80.

Despite a temporary improvement in the margin of safety during the period 1980–82, perhaps reflecting the FAA's restrictions on air traffic at the busiest airports in response to the air traffic controllers' strike in 1981, the margin of safety continued to decline.

Between 1982 and 1985, the frequency of incidents increased from 1 per 12,031 departures in 1982, to 1 per 5,323 departures in 1985, a 55-percent increase over the period.

Simply stated, the problem is that the skies have become more crowded over the past few years. For example, the number of commercial passenger airlines has increased from 29 in 1978, to 307 in 1986. The number of commercial passenger aircraft operated has increased from 2,145 in 1978 to 3,824 in 1984. And, in light of the Aeromexico incident, one must not neglect to mention that the number of general aviation aircraft in operation has increased from 177,964 in 1978, to 220,940 in 1984.

The Federal Aviation Administration has been overwhelmed by the increased number of commercial flights, aircraft, and airlines. In the face of the dramatic growth in the commercial airline industry, the FAA this year has not yet recovered from the 1981 air traffic controllers strike. Indeed, there are 4,344 fewer experienced air traffic controllers employed by the FAA this year than there were in 1981 before the strike.

In addition, there are serious shortcomings in the FAA's system to ensure compliance with Federal safety regulations relating to aircraft maintenance and operations. For example, in fiscal year 1986 there are 30 percent fewer FAA inspectors to ensure such compliance than there were in 1978.

The problem is not just a question of money. Congress has been more than willing to provide the FAA with the resources necessary to ensure aviation safety. Indeed, Congress has consistently appropriated more funds than requested by the FAA for its operating budget. In each of fiscal years 1985 and 1986, the FAA requested $2.7 billion for FAA operations, and, each year, the Congress appropriated $2.8 billion.

Central to the difficulties facing the FAA is a policy conflict between the agency's statutory duties to promote commercial aviation and ensure its safety. This conflict may adversely affect the margin of aviation safety. Indeed, there are indications that the FAA provides assistance to the very carriers it shuts down for safety-related violations. For example, the FAA played a major role in helping Provincetown-Boston Airlines get back into

business after the carrier's operating license was lifted by the FAA. Subsequent to its reopening, with FAA assistance, a Provincetown-Boston flight crashed near Jacksonville, FL, on December 6, 1984, killing 13 persons.

Mr. President, in view of the recent Aeromexico tragedy, and the concerns regarding the FAA's ability to meet the challenges brought by the dramatic growth of the airline industry, it is time for an independent reexamination of the FAA, the Nation's aviation safety policy, and the impact of airline deregulation on aviation safety.

S. 2417, the Aviation Safety Commission Act, is a response to those concerns. On August 7, the Senate Committee on Commerce, Science, and Transportation reported the bill after hearings which were held on July 17 by the Subcommittee on Aviation. The bill was supported by the Air Transport Association, the Airline Pilots' Association, the National Air Traffic Controllers Association, the Professional Airways Systems Specialists, and the Aviation Safety Institution. On September 11, the Senate passed S. 2417.

The bill has 16 cosponsors, including Senators HOLLINGS, EXON, FORD, ROCKEFELLER, PROXMIRE, ANDREWS, CHILES, LONG, MATSUNAGA, KASSEBAUM, GOLDWATER, KASTEN, LAUTENBERG, SIMON, RIEGLE, and GORTON.

S. 2417 directs the President to appoint a seven-member, blue ribbon Aviation Safety Commission to make a complete study of the organization and functions of the FAA and the means by which the FAA may most effectively enhance aviation safety.

The duties of the Commission include consideration of whether the dual responsibilities of the FAA—promotion and regulation—are in conflict, thus impeding safety; and whether the FAA should be reorganized as an independent Federal agency with aviation safety as its sole responsibility.

Nine months from the date of enactment, the Commission is to submit a report to the President and the Congress containing the Commission's findings and recommendations, including any recommendations for legislation.

The work of the Commission will make a valuable contribution to congressional efforts to restore the margin of aviation safety. Until this essential goal is achieved, it is premature to declare that the Nation's skies are as safe as they can be.

Mr. President, time is running out on the 99th Congress. We should not leave this place without having set into motion a process to give us a reliable and authoritative judgment on what we should do with the FAA to assure that it can and will fulfill the vital responsibilities that have been assigned to it. The adoption of this amendment to this continuing resolution will move us one major step forward in this effort, and toward the goal of insuring aviation safety. I urge my colleagues to support my amendment.

Mr. STENNIS. I move adoption of the amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3169) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3169

(Purpose: To make a technical correction in provisions of the Food Security Act of 1985)

Mr. STENNIS. The next amendment we have that has been cleared, Mr. President, is an amendment by Senator DOMENICI. I send that amendment to the desk and ask for its presentation to the body by the clerk.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. DOMENICI, proposes an amendment numbered 3169.

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

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

The amendment is as follows:

At an appropriate place in the bill insert the following new section:

SEC. . In section 108B(4)(A) of the Agricultural Act of 1949, as added by section 705 of the Food Security Act of 1985, insert the following after "additional peanuts": "(other than net gain on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

Mr. DOMENICI. Mr. President, this amendment is a technical amendment that corrects a drafting omission in the 1985 farm bill.

The amendment is supported by Senator HELMS, the administration, and the peanut industry.

In addition, 13 other Senators from peanut-producing States cosigned a letter to Secretary Lyng which alerted the Department to this technical problem in the 1985 farm bill.

New Mexico valencias are expressly excluded from area-to-area profit and loss offsetting in the 1985 farm bill.

Congress intended for New Mexico valencias to be excluded from within area profit and loss offsetting as well.

New Mexico valencias are only a tiny fraction of the entire U.S. peanut industry.

There is bipartisan support among Senators from peanut-producing States and I know of no substantive reason why this amendment should not be accepted.

Mr. STENNIS. This amendment has been cleared on both sides, Mr. President, for consideration. I move its adoption.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3169) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3170

(Purpose: To provide that certain expenses of a private foundation in removing hazardous substances shall be treated as qualifying distributions for purposes of section 4942 of the Internal Revenue Code of 1954)

Mr. STENNIS. Mr. President, I have an amendment by Senator FORD of Kentucky, that has been cleared regarding the Brown Foundation. I send that amendment to the desk for presentation to the body.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. FORD, proposes an amendment numbered 3170.

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

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

The amendment is as follows:

At the end of the joint resolution add the following new section:

SEC. . CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTIONS.

(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the

President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

Mr. FORD. Mr. President, this amendment has been adopted twice before by the Senate. It has great merit and will allow a charitable foundation in Kentucky to continue to support worthwhile projects in my State. This amendment was adopted before by the Senate, once on S. 51, the Superfund bill, and then again on H.R. 3838, the Tax Reform Act of 1986. Unfortunately, the Superfund bill is stalled in conference and this provision was not included in the conference report to the tax bill. Because this foundation is so vital to Kentucky, I am grateful to my colleagues for their willingness to accept it.

This amendment would allow the James Graham Brown Foundation of Louisville, KY, to allocate certain expenses related to the removal of hazardous substances to the 5-percent of assets disbursement rule under section 4942 of the Internal Revenue Code.

The ability of the Brown Foundation to continue to finance many charitable and worthwhile projects and organizations in Kentucky is jeopardized without this amendment. Since its founding in 1954, the Brown Foundation has disbursed over $68 million to hospitals, schools, universities, and organizations for the handicapped. Over 85 percent of these funds, or a total of $58 million, have remained in Kentucky, financing such causes as the Boy Scouts, the Cerebral Palsy School, drug abuse centers, the Kentucky Heart Fund, hospices, the Kentucky Society of Crippled Children, Recording for the Blind, and hundreds of other equally needy and worthy concerns. Without the relief provided by our amendment, these and many other organizations will lose a prime source of funding.

The founder of the Brown Foundation bequeathed to it his stock in a company which operated several wood treating plants. By 1980, the Brown Foundation dissolved this company and liquidated its assets. In 1983, it was advised by EPA that one of the plants may have been responsible for the discharge of hazardous substances. As a responsible organization, the Brown Foundation entered a voluntary consent order with EPA to investigate the site, and fully intends to contribute its fair share of whatever cleanup costs may arise. However, to do so, the foundation will be forced to seriously deplete its corpus if it is unable to apply those costs to the disbursement requirements under section 4942 of the Internal Revenue Code.

The Brown Foundation does not seek to avoid any of its responsibility for cleanup costs; nor is it attempting to circumvent the intent of section 4942 by seeking to qualify what may be tremendous cleanup costs as qualifying disbursements. The Brown Foundation merely wishes to remain in the business of helping Kentuckians reach their goals by providing a continuing source of charitable giving in the Commonwealth. The loss of these funds would have a devastating impact on Kentucky.

I am pleased that the distinguished chairman of the Appropriations Committee, Senator HATFIELD, and my distinguished colleagues Senator STENNIS and Senator JOHNSTON, have agreed to accept this amendment.

Mr. STENNIS. I move adoption of the amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3170) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3171

(Purpose: To authorize a two-year demonstration project on I-75 sections in Northern Kentucky)

Mr. STENNIS. The next one, Mr. President, has also been cleared for presentation for the Senator from Kentucky, Mr. FORD. This relates to Interstate 75. I ask the amendment be presented to the body by the clerk.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. FORD, proposes an amendment numbered 3171.

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

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

The amendment is as follows:

In the appropriate section of the bill, add the following section:

SEC. . Notwithstanding any other provisions of title 23, the Secretary of Transportation shall carry out the following project:

I-75 corridor in Kenton County, Kentucky, to examine the feasibility of unmanned radar units for safety purposes

Mr. FORD. Mr. President, there is a portion of I-75 in Kenton County, KY, commonly referred to as "Death Hill." The number of fatal accidents on this portion of the major highway entering into Cincinnati from northern Kentucky has caused State and local officials to try extraordinary measures to slow down traffic.

One of the actions taken by the State of Kentucky was to install unmanned radar units. The FCC recently informed the State that the rules of the FCC do not permit such units to be unmanned. What we need is a little time. The FCC will allow such units if they perform another function such as counting traffic. The manufacturer will have to make the modifications and have them approved by the FCC Labs. Until this takes place State and local police would like to continue to use the equipment. This amendment will establish a demonstration project so that for safety reasons the unmanned radar units will be continued to be used on the steep incline which goes down to the bridge which crosses the Ohio River.

Mr. President, just to give the Senate some kind of idea of the problem in less than a week the Kentucky State Police issued over 1,000 traffic tickets on I-75. We have to use every measure possible to slow traffic and save lives on this portion of I-75.

The PRESIDENT pro tempore. The question is in agreeing to the amendment.

The amendment (No. 3171) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3172

(Purpose: To establish the National Commission to Prevent Infant Mortality)

Mr. STENNIS. The next cleared amendment we have is Senator CHILES from Florida, involving the Infant Mortality Commission. I send that amendment to the desk, Mr. President, and ask for its consideration.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS] for Mr. CHILES, proposes an amendment 3172.

Mr. STENNIS. I move that further reading of the amendment be dispensed with, Mr. President.

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

The amendment is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Commission to Prevent Infant Mortality".

FINDINGS AND PURPOSE

SEC. 2. The Congress finds and declares that:

(1) The United States ranked seventeenth in the world in 1982 with an infant mortality rate of eleven and two-tenths deaths per

thousand live births, a higher rate than many developed nations of the world.

(2) The infant mortality rate in some areas of the United States is twice the national rate.

(3) The main cause of a high infant mortality rate is low birthweight. Some 6.7 per centum of all infants born in the United States are of low birthweight.

(4) Inadequate prenatal care is associated with an increased risk of low birthweight. Some twenty-five percent of all pregnant women in the United States do not begin prenatal care until after the first three months of pregnancy, if at all.

(5) In certain areas throughout the United States, there exist barriers to medical services, nutritional support, educational opportunities, and financial support for adequate health care for pregnant mothers and infants. The absence of needed support services during prenatal care, labor and delivery, and post-partum care through the age of one year contributes substantially to a high national infant mortality rate.

(6) Our Nation, which benefits from many diverse governmental and private resources, has a patchwork, uncoordinated, and little understood approach to the delivery of services associated with preventing infant mortality.

(7) The Congress and the President can act to prevent infant mortality and the incidence of low birthweight infants by establishing a commission by law, whose purpose shall be to address respective governmental and private roles in the delivery of services associated with preventing infant mortality, and to recommend actions designed to change and improve the Nation's comprehensive approach to this national problem.

DEFINITION

SEC. 3. For the purposes of this Act, the term "infant mortality" refers to the number of infants born alive but who die before their first birthday.

ESTABLISHMENT OF A NATIONAL COMMISSION

SEC. 4. (a) To accomplish the purpose set forth in section 2 of this Act there is established the National Commission to Prevent Infant Mortality (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of fifteen members, as follows:

(1) Two members of the Senate, one to be selected by the majority leader of the Senate, the other to be selected by the minority leader of the Senate.

(2) Two members of the House, one to be selected by the Speaker of the House, the other to be selected by the minority leader of the House.

(3) Three members from representatives of State and local government; to be selected by the President and no more than two of whom shall be members of the same political party. One shall be a Governor; one shall be a State legislator; and one shall be a representative of local government.

(4) The Secretary of Health and Human Services shall be a member.

(5) The Comptroller General of the United States shall be a member.

(6) Six at large members, with demonstrated expertise in maternal and child health, shall be jointly selected by the majority leader of the Senate and the Speaker of the House.

(c) The Commission shall select a Chairperson and Vice Chairperson from among its members.

(d) Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(e) The Commission shall meet at the call of the Chairperson.

(f) Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

DUTIES OF THE COMMISSION

SEC. 5. (a) The Commission shall:

(1) Identify and examine comprehensively Federal, State, local, and private resources which impact infant mortality, including but not limited to—

(A) the effectiveness and adequacy of programs such as the Supplemental Feeding Program for Women, Infants, and Children; the Maternity and Infant Care Program; the Improved Pregnancy Outcome Program; the Maternal and Child Health Block Grant; Community Health Centers; prepregnancy services and other programs that increase access to prenatal and postnatal education, care, and nutrition;

(B) the effectiveness of current Federal and State policies under the Medicaid Program to ensure adequate access to prenatal and post- natal care for low-income pregnant women and mothers;

(C) the role of income maintenance and other programs that impact infant mortality such as Aid to Families with Dependent Children and Federal housing subsidies; and

(D) the adequacy of current Federal and State efforts to enable an appropriate distribution of properly trained health care professionals to provide comprehensive maternal and child health services.

(2) Identify current financial, intergovernmental, and within the Federal Government, interagency barriers to the health care needed to prevent high infant mortality.

(3) Review recommendations made in recent regional and national reports that promote the health status of childbearing women and their infants and carry forward such recommendations as deemed appropriate.

(b) The Commission shall—

(1) recommend a national policy designed to change and improve the current approach to preventing infant mortality, including recommendations concerning appropriate roles for the Federal Government, States, local governments, and private institutions;

(2) recommend to the Congress and the President what specific changes are needed within Federal laws and Federal programs to achieve an effective Federal role in preventing infant mortality; and

(3) present such recommendations to the President, the Speaker of the House, and the majority leader of the Senate no later than one year after enactment of this Act.

POWERS OF THE COMMISSION

SEC. 7. (a) The Commission, or at its discretion, any subcommittee or member thereof, may for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence and administer such oaths, as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission, subcommittee, or member thereof.

(b) The Commission may secure directly from any Federal department or agency such information as may be necessary to enable the Commission to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) To carry out this Act, the Commission may enter into such contracts and other arrangements to such extent or in such amounts as are provided in appropriation Acts, and without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Contracts and other arrangements may be entered into under this subsection with or without consideration or bond.

(d) The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

COMMISSION STAFF

SEC. 8. (a) The Chairperson and Vice Chairperson of the Commission shall appoint an executive director. The employment of such executive director shall be subject to confirmation by the Commission.

(b) The Commission may appoint and terminate the executive director selected under subsection (a) and such other personnel as it considers appropriate to assist in the performance of its duties under this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such executive director and other personnel without regard to the provisions of chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, except that the rate of pay for such executive director and other personnel may not exceed the rate payable for GS-18 of the General Schedule under section 5332 of such title.

(c) Service of an individual as a member of the Commission or employment of an individual by the Commission on a part-time or full-time basis and with or without compensation shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commission or as an employee of the Commission, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(d) Subject to such rules as may be prescribed by the Commission, the Chairman of the Commission may procure temporary and intermittent services under section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily rate payable for GS-18 of the General Schedule under section 5332 of such title.

SUNSHINE PROVISION

SEC. 9. The Commission shall establish procedures to ensure its proceedings are open to the public and the maximum extent practicable.

TERMINATION OF THE COMMISSION

SEC. 10. Ninety days after the Commission submits its recommendations as required by section 5(b)(3) the Commission shall terminate.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to the Commission $1,000,000. Amounts appropriated under this section shall remain available until the day on

which the Commission terminates under section 10.

Mr. CHILES. Mr. President, I am pleased today to offer to the continuing resolution an amendment to establish a national commission with the clear mandate to vigorously attack the problem of infant mortality in this country.

In my home State of Florida 1,120 children are added to the population every single day. Of these 1,120 children, 12 will die before their first birthday.

Here in the United States, despite the fact that we are one of the wealthiest and most advanced countries in the world, our infant mortality rate, as reported in the 1985 State of the World's Children Report, was higher then 15 other countries. Here in our Nation's Capital we lose nearly 20 of every 1,000 children born. That statistic is comparable to those experienced in some Third World countries, Mr. President.

The main cause of high infant mortality is low birthweight. Some 6.7 percent of all infants born in the United States are under 5½ pounds. Those who are lucky enough to survive their first day often must spend many days, months and even years with costly and burdensome handicaps.

Too many children are meeting untimely deaths and enduring preventable handicaps. Too many parents are asking that painful question, "Is there any greater suffering."

Further, Mr. President, the monetary costs of high infant mortality and low birthweight rates are significant. The annual cost of neonatal intensive care in this country is over $1.15 billion. Preventive care has been shown to be at least 3 times cheaper than providing neonatal intensive care.

We cannot ignore these numbers, these lost lives. We cannot continue to let our children fall victim to inadequate health care and treatment.

Fortunately, Mr. President, with a small investment in prenatal and postnatal care, we can significantly reduce the number of low birthweight babies and lower our infant mortality rate as well. If we can reduce the barriers to medical services, nutritional support, and health care for pregnant mothers and infants, then we can see some positive changes in the state of our country's children.

There are a number of very fine institutions and people working aggressively on these issues, Mr. President, and this bill has no intention of simply retracing the progress that has already been made. Instead, S. 1209 would coordinate and focus the efforts of the many governmental and private agencies that have been working this vineyard for years.

The commission would recommend an action strategy to change the Nation's approach to this critical problem. It would provide the comprehensive gameplan we need to coordinate Federal and State policies and services that affect access to prenatal care. It would address the gaps in our service delivery and reimbursement systems. Most of all, commission findings would heighten public awareness and force national consensus in the issue.

During 3 days of hearings, I heard from close to 70 witnesses on this bill, and only one group opposed the bill, that was the set of witnesses from the administration. They said the bill was too costly. It's an argument that is worth considering. Everybody likes to recount the words of the late Senator Everett Dirksen, "A billion here, a billion there, and pretty soon you're talking about real money."

A million dollars for this Commission is real money, Mr. President. It comes from the hard-earned tax dollars of American taxpayers. But I believe it will be money well spent if we can prevent or reduce our infant mortality rate in Florida, Minnesota, Tennessee, Delaware, the District, and throughout our country. There's a television ad about the value of preventive maintenance on an automobile where the mechanic says, "You can pay me now or you can pay me later." We're in that same situation on infant mortality and the cost later will be higher.

Mr. President, 27 of our colleagues in the Senate have shown their support for this Commission by becoming cosponsors of S. 1209. In addition, the proposed Commission has the support of the Southern Governors' Association, the National Governors' Association, the Institute of Medicine, the March of Dimes, the National Academy of Pediatricians, the National Association of Public Health Policy, and the National Perinatal Network. Most importantly, this bill has the strong support of many, many parents from around the country.

Mr. President, it is time for the Congress of this great country to address one of the most costly, embarrassing, and tragic problems it faces. We must take care of the infants and children who are dependent on us for their health and well-being. We have the knowledge and capability to help them. We need only to reach out and this Commission will enable us to take this important step.

Mr. STENNIS. Mr. President, I ask unanimous consent that a factsheet on this amendment be printed in the RECORD.

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

FACT-SHEET ON CHILES AMENDMENT ON INFANT MORTALITY

The Commission: Cost of establishing the Commission—$1 million one time cost. Life of the Commission would be 1 year to coordinate funding from all sources—Federal, State and local.

Commission Membership—15:

Two Senators selected by Majority and Minority Leader of the Senate.

Two House members selected by the Speaker and Minority Leader of the House.

Three Presidential appointees from State and local government. (One governor, one state legislator, and one local official).

One Secretary of HHS.

One Comptroller General (GAO).

Six at large (Speaker of the House & Majority Leader, jointly).

The Problem:

Infant Mortality is the number of babies who are born alive but die before their first birthdays. It is measured by the number of deaths per 1000 live births.

The main cause of IM is low birthweight (under 5½ lbs.); babies born too small are 40 times more likely to die within the first month of life than babies of the proper weight.

The provisional IM figure for the first 3 months of 1985 is 11.0 per 1000 births, up from the previous year.

9 of 11 states with the highest IMR are in the South. Florida has the 10th worst IMR in the nation, with 1,816 babies dying before their first birthdays.

Cities have a higher Infant Mortality Rate than most other areas. IMR also varies within communities, depending on affluency of neighborhoods.

Monetary Costs of High Infant Mortality:

The annual cost of neonatal intensive care in this country is over $1.5 billion.

Average cost to graduate an infant from a neonatal intensive care unit is between $80,000 and $100,000 per infant.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3172) was agreed to.

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

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

The motion to lay on the table was agreed to.

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AMENDMENT NO. 3173

(Purpose: To amend the Community Economic Development Act of 1981 to correct legislative oversight when program was transferred from the Department of Health and Human Services to the Department of Agriculture)

Mr. STENNIS. Mr. President, I send an amendment to the desk on behalf of Mr. HATCH.

The PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. HATCH, proposes an amendment numbered 3173.

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

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

The amendment is as follows:

RURAL DEVELOPMENT FUND LOANS

Insert at the end thereof:

Section 623B(b)(2) of the Community Economic Development Act of 1981 is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, any Utah or Ohio local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with this approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan."

RURAL DEVELOPMENT FUND LOAN AMENDMENT

Mr. HATCH. Mr. President, I rise to offer this technical amendment. Earlier this year we passed legislation which transferred the Rural Development Fund Loan Program from the Department of Health and Human Services to the Department of Agriculture. Unfortunately, when we did that, there were two counties in this country, one in Utah and one in Ohio, which had received money from the Federal Government but needed some paperwork before they could spend it.

When we transferred the program to the Department of Agriculture, the Department of Health and Human Services said that they were ready to approve the paperwork but were unable and the Department of Agriculture said that they didn't know enough about it to approve it and the two counties would have to start over in the approval process.

Mr. President, this amendment simply enables those two counties to do what the Department of Health and Human Services was going to approve. It passed the Senate Labor and Human Resources Committee without objection earlier this year as part of S. 2793. It has no budgetary impact because, as I said before, the two counties already have the money. They just can't spend it.

I ask that this amendment be adopted.

Mr. STENNIS. Mr. President, this amendment has been cleared on both sides.

Mr. HATCH. Mr. President, earlier this year we passed legislation which transferred the Rural Development Fund Loan Program from the Department of Health and Human Services to the Department of Agriculture. Unfortunately, when we did that, there were two counties in this country, one in Utah and one in Ohio, which had received money from the Federal Government but needed some paperwork before they could spend it.

When we transferred the program to the Department of Agriculture, the Department of Health and Human Services said that they were ready to approve the paperwork but were unable and the Department of Agriculture said that they didn't know enough about it to approve it and the two counties would have to start over in the approval process.

Mr. President, this amendment simply enables those two counties to do what the Department of Health and Human Services was going to approve. It passed the Senate Labor and Human Resources Committee without objection earlier this year as part of S. 2793. It has no budgetary impact because, as I said before, the two counties already have the money. They just can't spend it.

I ask unanimous consent to have printed in the RECORD the CBO estimate for S. 2793.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 16, 1986.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2793, the Public Health Service Technical Amendments of 1986, as ordered reported by the Senate Committee on Labor and Human Resources on August 6, 1986. It is expected that enactment of this legislation would result in no additional cost to the federal government. However, some discretionary federal spending for the National Hansen's Disease Center would be covered under the bill by Medicare or Medicaid. This would create new direct spending authority, estimated to be less than $11 million each year. The total federal deficit would remain unchanged.

The bill would make the Gillis W. Long Hansen's Disease Center eligible for Medicare and Medicaid reimbursement for covered services provided to the Center's eligible patients. The federal government would continue to fund any costs not covered by Medicare or Medicaid on a discretionary basis. The Center currently spends about $11 million each year for inpatient and outpatient care. Some portion of this could now be covered by Medicare or Medicaid, but the exact amount is unknown.

The bill would also change current law regarding breach of contract under the National Health Service Corps Scholarship program. Loan obligations would no longer be forgiven for scholarship recipients filing for bankruptcy. This provision could result in additional receipts to the federal government since it would now be able to collect loan obligations from those who are granted bankruptcy. The amount of receipts cannot be estimated, but it is likely to be small for the next few years. Since 1981, between 3 and 8 scholarship recipients each year have filed for bankruptcy and had it approved by the courts. The amount of their loan obligations that was forgiven is unknown. Using an estimate for average indebtedness, the federal government could have legal claim to about $2 million in scholarship obligations each year if a similar number of bankruptcy claims are granted. However, the federal government can only expect to collect a very small portion of this in each year as payments by scholarship recipients would most likely be made over time.

Provisions of the bill relating to Community Health Centers, the National Institutes of Health, geriatric training, and the nurse practitioner program would result in no additional cost to the federal government. Modifications of health insurance coverage for certain employees involve non-federal employees and would result in no additional cost to the federal government. The section of the bill concerning the Rural Development Loan Fund would also have no cost.

With best wishes,

Sincerely,

EDWARD GRAMLICH,
(For Rudolph G. Penner).

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3173) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3174

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator DOMENICI, an amendment which has been cleared by both sides.

The PRESIDING OFFICER (Mr. GORTON). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. DOMENICI] proposes an amendment numbered 3174.

Mr. STENNIS. 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:

H.J. Res. is amended by inserting in the appropriate place in the resolution the following new section:

SEC. . Section 535 of S. 2824 as reported by the Senate Committee on Appropriations on September 16, 1986, is amended by inserting before the period at the end thereof the following: "as amended by section 2011 of H.R. 5484 as passed by the Senate on September 30, 1986".

Mr. DOMENICI. Mr. President, the foreign assistance title of the CR, which was passed by the Appropriations Committee before the omnibus narcotics bill, incorporates existing authorization restrictions on aid to Bolivia; that is, section 611, International Security and Development Cooperation Act of 1985, (Public Law 99-83).

My amendment simply adds the more current Bolivia provision that the Senate passed Tuesday in the drug bill, final passage of which is more in doubt tonight.

Aid restrictions in my amendment: First half withheld until Bolivia conducts major interdiction operations; second half withheld until Bolivia has met existing crop eradication targets or makes substantial progress on a new eradication plan we agree to; and President Reagan must certify both of these to Congress; that is, two sepa-

rate Presidential certifications are required by my amendment.

The amendment takes notice of antinarcotics policies of President Paz Estenssoro and the recent positive steps by the Government of Bolivia but significant restrictions are still imposed because Congress must address the serious problem posed to the United States by coca production in Bolivia.

Recent positive steps by Government of Bolivia:

Invited in United States military for massive interdiction effort; that is, Operation Blast Furnace—a great political risk for any sovereign government to take;

Operation caused dramatic reduction in coca trade, and decreased prices for coca producers by 90 percent; and

Operation disrupted one crop cycle.

It misses the point to suggest that my amendment eases current restrictions on United States assistance to Bolivia. The real point is that my amendment—which is, again, language passed by the Senate Tuesday—is more effective than current law in reducing the amount of Bolivian cocaine coming into the United States.

Paz is antinarcotics; if we weaken him through a total aid cutoff, more narcotics will enter the United States.

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

The amendment (No. 3174) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3175

(Purpose to provide for a waiver of certain requirements under title XVIII of the Social Security Act with respect to the Connecticut Hospice)

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senators WEICKER and DODD, an amendment which has been cleared by both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. WEICKER and Mr. DODD, proposes an amendment numbered 3175.

Mr. STENNIS. 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, add the following new section:

SEC. . CONNECTICUT HOSPICE WAIVER.

Section 122(j) of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to waivers for certain hospices) is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary of Health and Human Services shall grant a waiver of the limitation imposed by section 1861(dd)(2)(A)(iii) of the Social Security Act (relating to the aggregate limit on the number of days of inpatient care) to any institution that was granted a waiver under paragraph (1). Such waiver shall provide for the application of such section to the institution by substituting "50" for "20", shall apply only to beds in services as of July 1, 1986, and shall become effective October 1, 1986.".

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

The amendment (No. 3175) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3176

Mr. STENNIS. Mr. President, I send to the desk, on behalf of the Senator from South Carolina [Mr. THURMOND], an amendment which has been cleared.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3176.

Mr. STENNIS. 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 insert:

That, to provide for a security buffer zone for the United States Department of Energy's Savannah River Plant near Aiken, South Carolina, title, control, and custody to six thousand twenty-one acres, more or less, of United States Department of Agriculture, Forest Service, lands shown on a map entitled "Forest Service Property Transfer, Savannah River Plant, Aiken, South Carolina", dated June 1984, are transferred without cost or reimbursement to the United States Department of Energy. The map and legal description of the boundaries of these lands shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, the Director of Real Property and Facilities Management, United States Department of Energy, and appropriate field offices of those agencies.

SEC. 2. This Act does not affect valid existing rights, or interests in existing land use authorizations, except that any right or authorization shall be administered by the Department of Energy after the enactment of this Act. Reissuance of any authorization shall be in accordance with applicable law and the regulations of the Department of Energy, except that the change of administrative jurisdiction shall not in itself constitute a ground to deny the renewal or reissuance of any authorization.

Mr. THURMOND. Mr. President, I rise for the purpose of entering into a colloquy with the distinguished chairman of the Senate Committee on Agriculture, Nutrition, and Forestry.

Senator HELMS, on August 1, 1985, I introduced S. 1577, a bill which would transfer control of certain forest lands near the Savannah River Plant from the U.S. Forest Service in the U.S. Department of Agriculture [USDA] to the Department of Energy [DOE]. The 6,021 acres of land to be transferred from the USDA to the control of the DOE has traditionally provided a variety of outdoor recreation opportunities for the residents of Aiken, SC, and other nearby communities. The three tracts of land that comprise this transfer have many game species including deer, wild hogs, wild turkey, small game, and waterfowl. Good fishing is also available in two lakes within this acreage.

It is my understanding that upon the transfer of this property to DOE that these lands should continue to be available for outdoor recreation, such as hunting and fishing. I ask the Senator from North Carolina, is my understanding correct?

Mr. HELMS. Yes. It is my intent that such recreational use would be continued. This land exchange would facilitate improved security for the Savannah River Plant. However, security and recreation are not mutually exclusive objectives. Accordingly, I fully expect the Department of Energy to do everything reasonable to continue public recreation on these lands.

Mr. THURMOND. Over the years the South Carolina Wildlife and Marine Resources Department has invested considerable time and effort in these lands. Would it be reasonable to expect that they could continue to participate in the management of these lands for their wildlife and recreation opportunities?

Mr. HELMS. It is my understanding that DOE intends to have a close working relationship with the South Carolina Wildlife and Marine Resources Department for the management of these lands for recreational opportunities.

Mr. THURMOND. The Department of Energy has expressed in writing their intent to continue to permit the recreational use of this land. I ask unanimous consent that a letter to me from Secretary Herrington of the Department of Energy concerning this matter be printed in the RECORD.

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

THE SECRETARY OF ENERGY,
Washington, DC, May 16, 1986.

Hon. STROM THURMOND,
U.S. Senate,
Washington, DC

DEAR SENATOR THURMOND: Thank you for your letter of March 25, 1986, concerning

proposed Federal legislation to return control of U.S. Forest Service lands to the Department of Energy (DOE).

This legislation (S. 1577) will greatly improve the security posture at the Savannah River Plant (SRP), and is consistent with similar actions recently taken by DOE, such as proposed airspace restrictions and improved control on South Carolina Highway 125. Controlling public access onto SRP in response to an increasing threat of international and domestic terrorism has been a primary goal of DOE over the past few years. In particular, we have evaluated security implications of uncontrolled public access on the three parcels of land which we formerly controlled, and have concluded that their transfer back to DOE would greatly enhance SRP security.

While it is true that the Savannah River can provide a means of access to SRP, a river, being a natural barrier, does not facilitate access to a geographic site in the same way that a land mass does. On the contrary, rivers have historically served as impediments to access.

Regarding the access to SRP afforded by the land on the Georgia side of the river that is under private ownership, it would be impossible for DOE to acquire all the land in the vicinity of SRP that represents a means of access to SRP. Additionally, acquisition of privately-owned land would result in displacing the owners.

Your constituent also expressed concern regarding the decline in recreation opportunities resulting from transfer of the land back to DOE. It is true that no security incidents have occurred at SRP during the past 2 years; however, as the incidence of terrorism increases, so must the measures to counteract terrorism. Additional land buffers form an integral part of the site integrity equation. On the other hand, we recognize our responsibility to be good stewards of the land, and with respect to recreational use, we intend to incorporate the land into our deer hunt program. These are public hunts conducted annually in the fall, as necessary, to reduce the incidence of deer/vehicle collisions. During 1985, we conducted 18 hunts which accommodated 3,312 hunters. The hunts are completely controlled by SRP operating and security forces, including providing transportation to and from the hunt sites. This control is necessary for evacuation purposes, to protect the health and safety of hunters in the unlikely event of a plant emergency.

We appreciate the opportunity to provide our views on this very sensitive subject. I trust this information will be responsive to your request.

Yours truly,

JOHN S. HERRINGTON.

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

The amendment (No. 3176) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3177

(Purpose: To make amendment regarding limitation of funds for use of the Consumer Product Safety Commission)

Mr. STENNIS. Mr. President, I send to the desk, on behalf of the Senator from Missouri [Mr. DANFORTH], an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. DANFORTH, proposes an amendment numbered 3177.

Mr. STENNIS. 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 5, line 3, insert the following immediately before the period: ", other than the provisions regarding use of funds for personnel compensation and benefits for Commissioners of the Consumer Product Safety Commission contained in H.R. 5313".

Mr. DANFORTH. Mr. President, I rise to introduce an amendment to House Joint Resolution 738, the continuing resolution. Included in the HUD-independent agencies appropriations bill, H.R. 5313, approved by the Senate Appropriations Committee on September 25, is language that would limit the Consumer Product Safety Commission to three commissioners during the coming fiscal year. The amendment I have sent to the desk would nullify this language.

Mr. President, by statute the CPSC is to consist of five commissioners. The HUD-independent agencies appropriations language contravenes the CPSC statute. Its language mandating a change in the number of CPSC commissioners should be considered by the authorization committees with jurisdiction over the CPSC, after public hearings. No such consideration has occurred.

The motive for this restrictive language is obscure. The Appropriations Committee cannot claim any cost savings as the result of its proposed restriction on the number of CPSC commissioners. Instead of reducing the CPSC budget, the committee has only reallocated the funds. By nullifying the restriction, my amendment will not require additional funding for the CPSC.

The report of the Appropriations Committee claims that restricting the CPSC to three commissioners "should produce a more harmonious Commission." The fact is that since the first week in August the CPSC has operated with three commissioners and the results have been anything but harmonious. Internal disputes over management of the agency have increased and Commission meetings have been canceled because a quorum was not present.

Though there has been criticism of the CPSC in the past, this reduction in the number of commissioners at the CPSC is premature and may not answer the criticisms. During the next Congress, I expect that the CPSC will be extensively reviewed by the appropriate Senate and House authorizing committees.

The CPSC has contributed significantly to consumer safety in this country, and it would be foolish to undercut this agency before the facts have been ascertained. I urge my colleagues to support my amendment.

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

The amendment (No. 3177) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3178

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator GRASSLEY and Senator HARKIN, an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. GRASSLEY and Mr. HARKIN, proposes an amendment numbered 3178.

Mr. STENNIS. 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 insert:

NONPROFIT NATIONAL RURAL DEVELOPMENT AND FINANCE CORPORATION

Section 1323(a)(1) of the Food Security Act of 1985 is amended by striking out "September 30, 1986." and inserting in lieu thereof "September 30, 1987,", and

Section 1323(a) is further amended by adding at the end thereof a new subsection:

"(5) Notwithstanding any provision to the contrary of subsection (4) above, the $20,000,000 which was available pursuant to Subsection (4) shall continue to be available and shall be sued by the Secretary prior to September 30, 1987 to guarantee loans for the national rural development and finance program and shall remain available until expended.", and,

Section 1323(b)(1) of such Act is amended by striking out "September 30, 1986," and inserting in lieu thereof "September 30, 1987,", and inserting the words "made or to be" after the word "guarantees", *Provided further*, That such grant funds may be used by such corporation to provide technical assistance and financial assistance, including capitalizing revolving loan programs, pursuant to the Act.

Mr. GRASSLEY. Mr. President, I rise today to offer an amendment to the continuing resolution, unfortunately out of necessity, and not by preference.

Last year Congress passed legislation I offered to initiate a Rural Economic Development Loan Program. Federal involvement in this program was scheduled to last only until the end of this fiscal year, after which State and local interests would carry on.

This program was designed to plant a "seed" in our rural areas hit so hard by farm problems of the past few years.

We had hoped that a program would be in place so it would have allowed us to make low-interest loans to start off-farm jobs for those farmers needing additional income to keep their farms, or for new jobs for those that have lost their farms and need a new profession, at the same time trying to maintain our rural communities that are so important to the continued vitality of the rural areas of our States.

We saw this as a pilot program that would help from 5 to 15 States which would take the lead and develop a program on a State level to be approved and administered by the Governors of those States.

A State is to match the Federal money in this program, which should insure the followthrough on the States' part as well as make certain their investment was a sound business decision. As a further incentive we felt it would be wise for the program to allow a State, or its designee, to use its grant to offer loans to developers, similar to the Urban Development Action Grant Program. In this case, the grant is made to a State to then be loaned out at a very low interest rate or no interest, but paid back to the States' designated group so they could then reloan the money to others needing help.

The Department of Agriculture missed this point completely and left this out of their rules, so we are here today to correct this problem. We do not and have not intended this grant money to go directly to a developer. In fact during the review of this program that concern came up during discussions with Senator HELMS' staff. We indicated we difinitely did not see this grant section of the program as one that gave money to developers. Instead it provides money for a State or its designee to set up a revolving loan program administered and run by a State or its designee, with that State's Governor responsibile for the program.

This program should be designed so there is little involvement on the Federal Government's part. Let us send the administration of this program back to the States. That is where we wanted it, not at the Department of Agriculture whose staff seems to want otherwise.

If the Department of Agriculture hears my message this time then they will understand that we do not want them permanently in this program. It is only a 1-year program for them. Then they get out and let the States run it.

This amendment does not add one dollar to the appropriations side of this bill. It only requires the use of the money already authorized in Congress, but stalled by the Department for close to a year.

Our rural areas in this country are in trouble. We in Iowa alone have lost over 5,000 farmers this last year, some of whom might have been helped if the Department of Agriculture had done their jobs and tried to get this program underway instead of trying to kill it. To ignore Congress the way this Department has is unbelievable and they should not be allowed to get away with it.

I urge my fellow Senators to support this amendment and send a definite message to the Department of Agriculture that we expect them to comply with intent in a timely and in responsive way.

Mr. HARKIN. Mr. President, this amendment provides that the Department of Agriculture may use 1986 loan guarantee funds designated for the National Rural Development and Finance Corporation in fiscal year 1987.

This program, provided for in the farm bill, was supposed to be funded by the Department of Agriculture in fiscal year 1986. Unfortunately, for a variety of reasons, the Department has not met the deadline. However, they do expect to be able to obligate loan guarantees in the very beginning of fiscal year 1987.

The program provides for loan guarantees and funds that had been appropriated but have been unobligated under the Community Economic Development Act to a national corporation which will then be distributed to applying States. The program will stimulate the creation of off-farm rural economic and business development through the leveraging of below market rate loans in rural areas and small towns to those who will start businesses. This program will not simply provide some cash, the Corporation will continue to work with the business to maximize their chances for survival.

Rural areas of our country have been devastated by low farm prices. It is not only the farmers who are taking a beating; the entire rural economic infrastructure is suffering. In many small communities in my State, a quarter or even a third of the stores on Main Street stand empty. That must be turned around. And, this program is an extremely efficient method to spur rural development which is so badly needed.

It builds on the individual project efforts of the private, nonprofit National Rural Development and Finance Corporation. In these projects, a high degree of leveraging was achieved. A permanent new job was created for every $8,000 loaned by the Corporation.

The legislature of my State of Iowa has already provided matching funding for the program from its lottery profits. A $640,000 allocation from the State lottery was provided in fiscal year 1986 and there will be continued additional funding in each year of this century. This is not a short-term quick fix. It is a well thought out, long-term piece of an economic development package that must be put into place.

The amendment also contains language making it clear that the grants may be placed into a revolving fund.

I urge that my colleagues support the amendment.

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

The amendment (No. 3178) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3179

(Purpose: To express the sense of the Senate with respect to shared broadcast transmissions between Canada and the United States)

Mr. STENNIS. I send to the desk, on behalf of Senator LEAHY and Senator MATHIAS, an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. LEAHY and Mr. MATHIAS, proposes an amendment numbered 3179.

Mr. STENNIS. 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 resolution add the following:

Since Canada and the United States have demonstrated interest in sharing the benefits of transborder broadcast transmissions;

Since sharing broadcast transmissions originating in Canada and the United States is in the interest of international comity;

Since it is a recognized principle that authors of literary and artistic works should have the exclusive right of authorizing the broadcasting of their works and receive equitable remuneration for use of their creative products;

Since the United States copyright law, section 111 of title 17, United States Code,

provides compensation to Canada program owners for the retransmission of their copyrighted broadcast programs in the United States, and in some cases, exclusive rights and full copyright control for the use of such programs, Canadian law permits the unauthorized and uncompensated retransmission of United States programs in Canada;

Since the Government of Canada has expressed its intention to meet the challenge of creating an appropriate and balanced copyright environment through recognition of a general retransmission right in proposed revisions of Canada's 1924 Copyright Act; and

Since 1983, while the Government of Canada has discussed the possibility of introducing new copyright legislation, the unauthorized and uncompensated retransmission of United States origin television programming has been permitted to expand throughout Canada; Now, therefore, be it

Declared, That it is the sense of the Senate that—

(1) unauthorized and uncompensated retransmission of United States origin television programming included in United States broadcast signals should not be permitted to expand further in Canada,

(2) this longstanding issue of Canada's unauthorized and uncompensated retransmission of United States broadcast signals should receive speedy and efficient resolution, and

(3) the Senate, recognizing the significant potential for aiding the international free flow of information through the medium of television, and affirming the universal principle of fairness and equity through remuneration for use of television programming, should support the efforts of the United States Senior Interagency Group on International Communication and Information Policy, co-chaired by the Departments of State and Commerce, and its working group on Copyright and Intellectual Property, chaired by the National Telecommunications and Information Administration, to achieve an immediate settlement of the retransmission issue with the Government of Canada.

Mr. LEAHY. Mr. President, since 1983, the Government of Canada has expressed its intention to revise its 1924 Copyright Act with respect to the retransmission of broadcast signals by cable systems.

Briefly, Mr. President, the issue is one of fairness. Currently, United States program owners are not compensated by Canadian cable systems for the retransmission of their copyrighted broadcast programs. However, United States copyright law does provide this compensation to Canadian program owners for retransmission of their copyrighted broadcast programs in the United States.

The situation seems to be getting worse instead of better. CANCOM, a Canadian corporation, has been authorized by the Canadian Radio and Television Commission to intercept United States broadcast signals and retransmit those signals to Canadian cable systems via a Canadian communications satellite. CANCOM is expanding its services within Canada.

To put it bluntly, this expansion involves pirating off-air broadcast signals of U.S. network affiliates. Independent Canadian cable companies increasingly are pirating United States superstation signals off United States domestic satellites.

Our two countries have been meeting to resolve differences in United States and Canadian copyright law in order to promote fair policies and practices. Unfortunately, the Niagara IV consultations in March of this year, and an ad hoc meeting in May between an expert group from Canada and a United States interagency group chaired by the National Telecommunications and Information Administration, met with little success.

Secretary Baldrige has asked the Canadian Minister of Communications, Flora MacDonald, for an interim accord on copyright compensation for cable retransmission while the Canadian Government is continuing its copyright law revision process.

It is very disappointing that Secretary Baldrige's proposal has been turned down. There is substantial concern that the Canadian Government simply is not doing all it can to expedite a satisfactory end to this continuing problem.

In the last Congress, I introduced the international copyright fairness bill to redress the imbalance in copyright protections afforded materials retrainsmitted by foreign cable systems. My bill was designed to restore the balance between United States and Canadian trade practices in the most important of all commodities—words and ideas. It would have accomplished this goal by giving Canadian copyright owners only those benefits which Americans receive for the use of their copyrighted works in Canada.

I did not reintroduce this bill in the 99th Congress, Mr. President, because the Canadian Government had given us assurances that it would move quickly to resolve the unfairness in its copyright laws. But, unfortunately, we are still waiting.

So, we will come to the latest in a series of meetings between our respective countries, to be held later this month in Ottawa, to work out differences.

Accordingly, Senator MATHIAS and I are today introducing a sense-of-the-Senate resolution to support the speedy and efficient resolution of this problem. The resolution states that:

Unauthorized and uncompensated retransmission of United States' broadcast signals should not be permitted to expand further in Canada;

This unauthorized and uncompensated retransmission of U.S. broadcast signals should receive speedy and efficient resolution; and

The Senate supports the efforts of the U.S. Senior Interagency Group on International Communication and Information Policy, cochaired by the Departments of State and Commerce, and its Working Group on Copyright and Intellectual Property, chaired by the National Telecommunications and Information Administration, to achieve an immediate settlement of the retransmission issue with the Government of Canada.

The Canadian Government must know that the United States Congress is serious, that we are committed to a resolution of this problem, and that we expect results.

To do less would be to undermine the important creative products of our citizens. To do less would be to undermine the technological advances evolving from satellite capabilities which unite our countries across the longest open border in the world.

I ask unanimous consent that an exchange of correspondence between Secretary Baldrige and the Canadian Minister of Communications be printed in the RECORD.

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

THE SECRETARY OF COMMERCE,
Washington, DC, May 21, 1986.

His Excellency MARCEL MASSE,
Minister of Communications, Department of Communications, Government of Canada, Ottawa, Ontario, Canada.

DEAR MR. MINISTER: This year, during the proposed revision of the 1924 Canadian Copyright Act, it is appropriate that the United States and Canada should be equally interested in the technological advances evolving from satellite capabilities, which unite them across the longest open border in the world. The need to share these technological advances leads directly to the discussion of an issue separating the United States and Canada—the problem created by unauthorized and uncompensated retransmission of U.S. origin broadcasts by Canadian cable systems.

This long-standing issue has been the subject of a number of U.S. diplomatic expressions of concern, and most recently was discussed by representatives of our two countries at the Niagara IV consultations on March 24 and 25, 1986. However, despite our repeated expressions of concern, the issue remains unresolved. This problem should be resolved in the short term and not left to the trade agreement negotiations.

As you know, there will be a meeting of a U.S. interagency group chaired by the National Telecommunications and Information Administration on May 27 in Washington to discuss this issue with an expert group from Canada. This meeting offers a good opportunity for our two countries to make progress toward resolution of the retransmission issue. In view of Prime Minister Mulroney's pledge to President Reagan at the Quebec Summit in March, 1985, that "best efforts would be made to accommodate U.S. concerns on the protection of programming retransmitted by cable or satellite," I hope that resolution of this issue is at hand.

Sincerely,

MALCOLM BALDRIGE,
Secretary of Commerce.

MINISTRE DES COMMUNICATIONS,
Ottawa K1A0C8.

Hon. MALCOLM BALDRIGE,
Secretary of Commerce,
Department of Commerce,
Washington, DC.

DEAR MR. BALDRIGE: It is my pleasure to reply to your letter of May 21, 1986 addressed to my predecessor, the Honourable Marcel Masse, in which you refer to the ongoing revision of the Canadian Copyright Act and more precisely to the implementation in Canada of a retransmission rights regime that would apply to television programming of U.S. origin carried by Canadian cable systems.

The Canadian Government is proceeding with the development of new copyright legislation as quickly as circumstances and the legislative process allow. As you noted in your letter, at the Quebec Summit meeting between the Prime Minister and President Reagan in 1985, the Prime Minister "undertook best efforts to accommodate U.S. concerns on the protection of programming retransmitted by cable and satellite when the Government develops legislative proposals". Several steps have been taken honouring that undertaking: a parliamentary sub-committee on copyright has reviewed the question and recommended the recognition of retransmission rights; the Government accepted that recommendation in February 1986 of this year and, as a result, new copyright legislation currently is being drafted.

I trust that the May 27 meeting in Washington provided a good opportunity for officials from both our countries to review U.S. concerns and to learn of the U.S. experience in implementing its own retransmission rights regime. I am informed that another meeting is scheduled for this September or October which should permit further clarification of some aspects of the U.S. approach to this question, including current initiatives within the U.S. industry and government to adapt your system to meet today's needs.

In light of American experience you will appreciate that the modalities of implementing a new copyright regime for retransmission rights in Canada will require careful consideration. As was noted at the May 27 meeting, existing Canadian copyright legislation does not offer a legal basis for interim copyright protection measures for retransmitted signals. Even were that not the case, it is unclear that any measures could be introduced that would not prejudge new copyright legislation and thereby undermine the parliamentary process. Thus, interim copyright protection measures for retransmitted signals is not an option. That said, please rest assured that U.S. concerns play an important part in our determination to complete the legislative process for the revision of the Copyright Act as expeditiously as possible.

Yours sincerely,

FLORA MACDONALD.

THE SECRETARY OF COMMERCE,
Washington, DC, July 18, 1986.

Hon. FLORA MACDONALD,
Minister of Communications, Department of Communications, Government of Canada, Ottawa, Ontario, Canada.

DEAR MADAME: Congratulations on your recent appointment as Minister of Communications. You bring experience and expertise to a position which oversees matters of great interest to both Canada and the United States.

There is an important outstanding issue which has been discussed recently in bilateral meetings between our two countries. During the Niagara IV consultations in March and an ad hoc meeting in May, U.S. and Canadian delegations discussed Canadian cable retransmission of U.S. television signals, a problem which needs to be resolved as expeditiously as possible.

Compensation to copyright holders for commercial use of U.S. television programs is a right to which I think U.S. citizens are entitled without further delay. Since it now appears that the Canadian Government favors the recognition of a broad, new retransmission right in the revised version of the copyright act, I propose that the United States and Canada reach an interim accord on copyright compensation for cable retransmission while the revision process is continuing.

I am pleased that an invitation has been extended by the Canadian Government to the U.S. delegation chaired by the National Telecommunications and Information Administration for additional talks in Ottawa in September. It is my hope that in your new position as Minister of Communications, it will be possible to achieve an expeditious resolution of this longstanding problem.

Sincerely,

MALCOLM BALDRIGE,
Secretary of Commerce.

MINISTRE DES COMMUNICATIONS,
Ottawa K1A0C8.

Hon. MALCOLM BALDRIGE,
Secretary of Commerce, Department of Commerce, Washington, DC.

DEAR MR. BALDRIGE: Thank you for your letter of July 18, 1986 and your kind words of congratulations on my appointment as Minister of Communications.

You will have received my letter of July 17, which addressed the question of the implementation in Canada of a retransmission rights regime that would apply to television programming of U.S. origin carried by Canadian cable systems. For the reasons stated in my previous letter, interim copyright protection measures cannot be viewed as an option. Nevertheless, we remain committed to completing the legislative process for the revision of our Copyright Act as expeditiously as possible. The meeting between officials scheduled for this autumn will no doubt provide a further opportunity to clarify our respective approaches to this question.

Yours sincerely,

FLORA MACDONALD.

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

The amendment (No. 3179) was agreed to.

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

Mr. HATFIELD. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3180

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator ZORINSKY, an amendment which has been cleared.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. ZORINSKY, proposes an amendment numbered 3180.

Mr. STENNIS. 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 2, line 12, strike out the period and insert in lieu thereof a colon and the following: *Provided*, That, during fiscal year 1987, the Commodity Credit Corporation shall use $1,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under section 4(m) of the Commodity Credit Corporation Charter Act. In addition to any sales required under any other Act, the Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than $1,000,000.".

Mr. ZORINSKY. Mr. President, this amendment to the continuing resolution provides funds that will help fund research and development of external combustion engines. This is an area which holds great promise and potential for America's future energy independence, and could be an enormous boon in providing small-scale power sources to farmers and rural communities across the country.

Mr. President, my amendment provides $1 million in surplus commodities owned by the Commodity Credit Corporation to be used to fund private sector research and development of external combustion engines during fiscal year 1987. While funding would be under the appropriations bill for the U.S. Department of Agriculture, there is ample precedent for Federal assistance for similar projects. The Department of Energy has provided some $140 million in research and development financing over the past several years on a prototype automotive external combustion engine. Unfortunately, production of an engine small enough to be incorporated into a car design has not proved feasible. It should be noted, however, that this research has served to underscore rather than diminish the potential benefits of external combustion engines in other applications.

In reviewing the many potential advantages of this kind of engine, Mr. President, two are particularly noteworthy. First, the engine is highly adaptable to alternative fuel sources. It can run on coal in areas where that fuel is plentiful and inexpensive. In areas where forestry is a major industry, it can use wood chips and other byproducts which have no other eco-

nomic value. It can also burn any biomass material and convert the resulting energy into a rotary action transfer to the desired end use.

The second primary advantage of these engines, Mr. President, is the array of uses to which the engine can be applied. Basically, any stationary task requiring limited energy output could be filled by this technology. Uses could include such things as grain drying, alternative heating and electrical generation for commercial and residential buildings, and power for central pivot irrigation systems. The benefits would be particularly important in rural areas where conventional power systems are either more costly, not available, or too expensive to install.

An additional argument for developing the external combustion engine, Mr. President, is the contribution it would make to this Nation's ongoing quest for energy independence. The current relative surplus in world oil production has, to some extent, lulled the United States into mild complacency about our past dependence on foreign oil. We should use this time to ensure that energy contingencies are available the next time the oil faucet in the Middle East is turned off.

Our country's reserves of petroleum are basically proven and finite. Even a return of $1 or even higher gas prices could not draw enough new production out of the ground to meet demand. However, we do have a nearly inexhaustible supply of coal in the United States, as well as abundant renewable energy resources in our forests and fields.

The external combustion engine may not be the answer to every energy requirement, Mr. President. But it would fill an important role in certain key applications, particularly in rural America. As an innovative technology that will help to reduce U.S. dependence on imported foreign oil, the limited funding provided by the amendment is clearly justified, and would be looked back on as money well spent.

I urge my colleagues to support the amendment.

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

The amendment (No. 3180) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3181

(Purpose: To extend for one year the authority to operate WIN Demonstration programs fulfilling the AFDC work program; and to permit State applications to participate in WIN Demonstration)

Mr. STENNIS. Mr. President, I send to the desk, on behalf of Senator MOYNIHAN, an amendment which has been cleared on both sides.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. MOYNIHAN, Mr. KERRY, Mr. KENNEDY, Mr. BOREN, and Mr. MITCHELL, proposes an amendment numbered 3181.

□ 1010

Mr. STENNIS. 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 end of the joint resolution, add the following:

SEC. . Section 445(b)(1) of the Social Security Act is amended by striking out "June 30, 1985," and inserting in lieu thereof "June 30, 1987,".

Section 445(d) of such Act is amended by striking out "June 30, 1984," and inserting in lieu thereof "June 30, 1987," and by striking out "June 30, 1987" and inserting in lieu thereof "June 30, 1988".

Mr. STENNIS. Mr. President, I move that the amendment be adopted.

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

The amendment (No. 3181) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3182

(Purpose: To authorize wiretapping by state law enforcement officials in hostage taking situations)

Mr. STENNIS. Mr. President, I have another cleared amendment here by the Senator from South Carolina [Mr. THURMOND] on the subject of wiretapping, which I send 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 Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3182.

Mr. STENNIS. 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 insert; Add at the end of 18 U.S.C. 2516(2):

"Nothing in this chapter shall be deemed to prohibit a law enforcement officer, in a state that does not have a statute authorizing or approving the interception of wire, electronic or oral communications or a statute forbidding such interception, from intercepting a wire, electronic or oral communication in the course of investigating an ongoing hostage taking situation. If a suspect in the hostage taking situation is reasonably believed to be a participant in the communication, under circumstances in which it is impractical to obtain a court order authorizing such interception and, reasonable to assure the implied consent of the hostage to the interception of such communication."

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

The amendment (No. 3182) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3183

(Purpose: To prohibit the use of appropriated funds for the implementation of uranium enrichment criteria submitted to the Congress on July 24, 1986 pursuant to the provisions of section 161v of the Atomic Energy Act of 1954)

Mr. STENNIS. 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 Mississippi [Mr. STENNIS], for Mr. DOMENICI, proposes an amendment numbered 3183.

Mr. STENNIS. 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 joint resolution insert the following new section:

SEC. . None of the funds provided in this Act may be used to implement the uranium enrichment criteria submitted to Congress on July 24, 1986, pursuant to section 161v of the Atomic Energy Act of 1954.

Mr. STENNIS. Mr. President, this amendment which I have submitted on behalf of Mr. DOMENICI regarding the uranium-enrichment criteria, has been cleared by both sides.

I move that the amendment be approved.

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

The amendment (No. 3183) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. STENNIS. That is all I have, Mr. President.

Mr. HATFIELD. Mr. President, does the Senator from Louisiana [Mr. JOHNSTON] have any amendments here that have been cleared?

Mr. JOHNSTON. No.

Mr. HATFIELD. Mr. President, that is all that have been cleared for action now.

AMENDMENT NO. 3184

(Purpose: To amend the Internal Revenue Code of 1954 to deny status as a tax-exempt organization, and as a charitable contribution recipient, for organizations which perform, finance, or provide facilities for abortions)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] for Mr. HUMPHREY, Mr. ARMSTRONG, Mr. PROXMIRE, Mr. HELMS, Mr. MCCLURE, Mr. GRAMM, Mr. DENTON, and Mr. LAXALT proposes an amendment numbered 3184.

Mr. HATFIELD. 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. . DENIAL OF TAX BENEFITS FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.

(a) DENIAL OF TAX-EXEMPT STATUS.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DENIAL OF EXEMPTION FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—An organization shall not be treated as described in subsection (a) if such organization performs, finances, or provides facilities for any abortion, except where the life of the mother would be endangered if the fetus were carried to term."

(b) DENIAL OF ELIGIBILITY FOR CHARITABLE CONTRIBUTION.—

(1) INCOME TAX.—Section 170(c) (defining charitable contribution) is amended by adding at the end thereof the following: "For purposes of this section, such term does not include a contribution or gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(2) ESTATE TAX.—

(A) IN GENERAL.—Section 2055 (relating to transfers for public, charitable, and religious uses), as amended by section 717, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a transfer to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(B) TECHNICAL AMENDMENTS.—

(i) Subparagraph (E) of section 2106(a)(2) (relating to transfers for public, charitable, and religious uses from taxable estates of nonresidents not citizens) is amended by striking out "section 2055(e)" and inserting in lieu thereof "subsections (e) and (g) of section 2055".

(ii) Subparagraph (F)(ii) of section 2106(a)(2), as amended by section 717, is amended by striking out "section 2055(g)" and inserting in lieu thereof "section 2055(h)".

(3) GIFT TAX.—Section 2522 (relating to charitable and similar gifts), as amended by section 717, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (f) the following new subsection:

"(e) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(c) EFFECTIVE DATES.—

(1) ABORTIONS AFTER DATE OF ENACTMENT.—The amendments made by this section shall take into account only abortions (within the meaning of section 501(m) of the Internal Revenue Code of 1954 as added by this section) performed after the date of the enactment of this Act.

(2) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on September 30, 1986.

(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to estates of decedents dying, and transfers, after September 29, 1986.

The PRESIDING OFFICER. The amendment having been stated, is there debate on the amendment?

The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, here we are with most of us having only 3 hours of sleep since we departed the Chamber where the world's greatest deliberative body meets, and I thought I felt rather poorly this morning until I heard the chairman of the Appropriations Committee, I regret that he is feeling so poorly, but I must say I admire, as I am sure all our colleagues do, his fidelity and his determination.

Mr. President, I want to say at the outset that the amendment now before the body is cosponsored by Senators ARMSTRONG, PROXMIRE, HELMS, MCCLURE, GRAMM, DENTON, and LAXALT.

The amendment arises out of legislation introduced earlier this year, S. 2382. In fact, the amendment before us is identical to that legislation with the change of two words.

I want to say also for the record at the outset that S. 2382, the parent of this amendment, if you will, is supported by the Reagan administration.

I ask unanimous consent at this point to print in the RECORD a statement of the administration policy which makes it clear the President supports this effort, along with other additional material.

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

STATEMENT OF ADMINISTRATION POLICY

September 29, 1986.

S. 2382, TAX EXEMPTION EQUITY ACT OF 1986, AS AMENDED (SENATOR HUMPHREY, NEW HAMPSHIRE)

The Administration supports S. 2382, Tax Exemption Equity Act, as amended on June 9, 1986 by Senator Humphrey.

The legislative language now proposes to deny a tax exemption to any organization which performs, finances or provides facilities for abortions.

NORTHWESTERN UNIVERSITY
SCHOOL OF LAW,
Chicago, IL.

ANALYSIS OF SENATOR HUMPHREY'S TAX EXEMPT STATUS AMENDMENT

Having had the privilege to argue in favor of the "Hyde Amendment" before the Supreme Court in *Harris* v. *McRae* and *Williams* v. *Zbaraz*, it is my considered judgment that doctrines and reasoning similar to those that supported the constitutionality of the Hyde Amendment apply to Senator Humphrey's proposal which would eliminate tax exempt and tax deductible status to organizations which perform, finance, or provide facilities for abortion.

Needless to say, these views are my own and should not in any way be taken to constitute positions of my University or its faculty.

Although it is established constitutional doctrine that a Congressional penalty on constitutionally protected acts is not sustainable, the Justices in the Harris and Williams cases concluded that refusal to fund or subsidize abortions did not constitute such a penalty. Congressional refusal to allow a tax exemption for private contributions that fund abortions warrants the same judicial conclusion.

The applicable tax cases seem to me entirely compatible with this view. Tax exemptions have been treated as subsidies, not as penalties, in those cases; and the discretion of Congress in formulating tax policy has, if anything, been deemed greater than in formulating other legislative policies. For example, in *Regan* v. *Taxation with Representation*, 103 S.Ct. 1997 (1983), the Justices stated explicitly that "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes . . . We have held in several contexts that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." (103 S.Ct. 1997, at 2002, 3.) Quoting from an earlier case, the Justices described tax exemptions as "a matter of grace that Congress can, of course, disallow . . . as it chooses." *Id*, at 2003.

In *Bob Jones University* v. *United States*, 103 S.Ct. 2017 (1983), the Court reiterated the primacy of Congressional choice in the determination and application of tax policy. The powers that "Congress has seen fit to vest" have provided the keys to judicial interpretation. "Since Congress cannot be expected to anticipate every conceivable problem that can arise or to carry out day-to-day oversight, it relies on the legislative will." (103 S.Ct. 2017, at 2031). What directs judi-

cial interpretation of tax policy is clearly "the legislative will."

I believe, in short, that Senator Humphrey's proposal to refuse federal subsidization through tax exemption to the funding of abortions can pass constitutional scrutiny pursuant to the criteria and doctrines applied by the Justices.

Best regards,

VICTOR G. ROSENBLUM,
Professor of Law.

AMERICANS UNITED FOR LIFE,
LEGAL DEFENSE FUND,
Chicago, IL, September 15, 1986.

Re H.R. 2897.

Senator GORDON HUMPHREY,
Senate Hart Building, Washington, DC.

DEAR SENATOR HUMPHREY: You have asked this office to review the constitutionality of your bill (H.R. 2897), in light of the recent claim by Professor Laurence H. Tribe of Harvard Law School that the bill would be unconstitutional under the Due Process Clause of the Fifth Amendment. Having reviewed only the issue of the constitutionality of H.R. 2897, we offer the following analysis and conclusions. In sum, we find H.R. 2897 to be constitutional under relevant Supreme Court precedent.

The version of H.R. 2897 that we have analyzed would, first, amend § 501 of the Internal Revenue Code (IRC) and add a new subsection (m), which would provide that an "organization" would not be exempt from taxation under § 501 "if such organization performs, finances, or provides facilities for any abortion, except where the life of the mother would be endangered if the fetus were carried to term." Second, H.R. 2897 would amend § 170(c) of the IRC by adding new language, which provides that the term "charitable contribution" "does not include a contribution or gift to or for the use of any organization which performs, finances, or provides facilities for any abortion. . . ." Third, H.R. 2897 would expressly deny any tax deduction for any contribution to "any organization which performs, finances, or provides facilities for any abortion. . . ."

In a July 29, 1986 message, entitled "An Open Letter to All Senator", Professor Tribe suggests that a bill along the lines of H.R. 2897 "would, in all likelihood, violate the Due Process Clause of the Fifth Amendment" by establishing "a congressional penalty on constitutionally protected abortion choices—no less so than if Congress were to withhold food stamps or other benefits from families any of whose members had chosen abortions." In support of this conclusion, Professor Tribe cites *Federal Communications Commission* v. *League of Women Voters*, 104 S.Ct. 3106 (1984), *Regan* v. *Taxation With Representation*, 461 U.S. 540 (1983), and *Harris* v. *McRae*, 448 U.S. 297 (1980). Our review of these cases, as well as *Perry* v. *Sindermann*, 408 U.S. 593 (1972), *Cammarano* v. *United States*, 358 U.S. 498 (1959), *Speiser* v. *Randall*, 357 U.S. 513 (1958) leads us to conclude with confidence that H.R. 2897, as presently drafted, is entirely constitutional.

We start from the fundamental principle, which the Supreme Court has repeatedly reaffirmed, that "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. "*Regan*, 461 U.S. at 547, citing *Madden* v. *Kentucky*, 309 U.S. 83, 87–88 (1940).

The second fundamental principle is that "[b]oth tax exemptions and tax deductability are a form of subsidy that is administered through the tax system." *Regan*, 461 U.S. at 544. "A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions." Id. at 545.

The third fundamental principle is that "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny. "*Regan*, 461 U.S. at 549, *Harris* v. *McRae*, 448 U.S. 297, 322 (1980), *Buckley* v. *Valeo*, 424 U.S. 1 (1976). As a result, a statutory classification which is created by the legislature to justify its refusal to subsidize the exercise of a fundamental right is valid if it bears "a rational relation to a legitimate governmental purpose." *Regan*, 461 U.S. at 547.

These fundamental principles fully apply to H.R. 2897 and establish its constitutionality.

In Regan, Taxation With Representation (TWR) contended that Congress violated the First Amendment by denying tax exempt status under § 501(c)(3) of the IRC for organizations the "substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation." 26 U.S.C. § 501(c)(3) (1982). The Supreme Court held that Congress' refusal to subsidize lobbying activity by allowing tax exempt status for such activity under § 501(c)(3) did not infringe any First Amendment rights. 461 U.S. at 544–46.

TWR made the same argument offered by Professor Tribe that "government may not deny a benefit to a person because he exercises a constitutional right." This proposition was established by *Speiser* v. *Randall* and *Perry* v. *Sindermann* (the Speiser-Perry model). Although this proposition is generally true, the Court in Regan distinguished Congress' denial of tax exempt status from such a penalty.

The Code does not deny TWR the right to receive deductible contributions to support its non-lobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby, Congress has merely refused to pay for the lobbying out of public moneys.

In Regan, TWR also contended that Congress violated the Equal Protection Component of the Fifth Amendment by denying tax exemption to organizations which engage in substantial lobbying. The Court held that the denial of tax exemption did not violate Equal Protection because no suspect classification was involved, strict scrutiny was therefore not applicable, and the denial of exemption for lobbying activity bore a rational relation to a legitimate governmental purpose. Id. at 546–550.

H.R. 2897 does not attempt to regulate speech or "the expression of particular views" and therefore its constitutionality cannot be challenged under Regan, Speiser, or Perry. Rather, H.R. 2897 expressly is limited to organizations which "perform, finance, or provide facilities for abortions." H.R. 2897 does not apply to speech which advocates, encourages, or constitutes referral for abortions. We note that Professor Tribe does not contend that H.R. 2897 affects free speech or violates the First Amendment. It should be emphasized that Speiser and Perry were limited to the exercise of free speech.

H.R. 2897 does not affect a suspect classification. The Supreme Court has previously held that even indigent women desiring abortions are not members of any suspect class. *Harris*, 448 U.S. at 232, citing *Maher* v. *Roe*, 432 U.S. 464, 470–71 (1977). If women desiring abortions are not members of a suspect class, neither are organizations which "perform, finance, or provide facilities for abortions." The abortion right is solely the woman's, not that of anyone else. *Whalen* v. *Roe*, 429 U.S. 589, 604–605 n.33 (1977). Thus, H.R. 2897 is constitutional as long as it bears a rational relationship to a legitimate governmental objective. Certainly, the same legitimate governmental objective which underlay the Hyde Amendment and was upheld in *Harris* v. *McRae* also supports H.R. 2897.

The reasoning of the Court in Regan, distinguishing a penalty from the denial of tax exempt status for particular activity, is directly applicable here. H.R. 2897 does not deny any organization the right to receive tax deductible contributions to support non-abortion activity nor does H.R. 2897 deny any independent benefit on account of an organization's intention to promote or perform abortion. 461 U.S. at 545.

The reasoning of the Court in Regan with respect to TWR's alternatives under § 501(c)(4) is also directly applicable here. Any organization which performs, finances, or provides facilities for abortion could still qualify for a tax exemption under 501(c)(4). It could also obtain tax-deductible contributions for non-abortion activity by creating a dual structure, "with a § 501(c)(3) organization for [non-abortion] activities and a § 501(c)(4) organization for [abortion activity]." Id. at 544. The organization would simply "have to ensure that the § 501(c)(3) organization did not subsidize the § 501(c)(4) organization." Id.

The essential flaw in Professor Tribe's reasoning is that his reference to the withholding of food stamps or other benefits from persons who choose abortion is simply not analogous to H.R. 2897. H.R. 2897's scope, which is similar to the scope of the constraints on lobbying under § 501(c)(3) approved by the Court in Regan, distinguishes it from such a broad withholding of benefits. H.R. 2897 does not withdraw all tax exempt status for non-abortion activity of organizations which perform, finance, or provide facilities for abortion; it simply denies exemption for that particular abortion activity. Nor does it deny deductability to individuals for all deductions simply because they contribute to an organization which "performs, finances, or provides facilities for abortion"; it simply denies deductability for that particular deduction.

Finally, Professor Tribe argues that H.R. 2897 does not simply refuse to subsidize abortion activity but goes farther by totally denying any exemption for any activity by an organization which "performs, finances, or provides facilities for abortion." First, although this may be the fair import of the language of H.R. 2897, the language of § 501(c)(3) in Regan with respect to organizations which engage in lobbying activity was just as broad. In other words, the denial of exemption in both § 501(c)(3), with respect to organizations that lobby, and in H.R. 2897, with respect to organizations that "perform, finance, or provide facilities for abortions", extends to the organization itself and not just to discrete activities within the organization. The Court in

Regan did not find this constitutionally objectionable and upheld the effective requirement of the creation of separate organizations. Second, the three justices who concurred in Regan, Justices Blackmun, Brennan, and Marshall, acknowledged Professor Tribe's argument, but emphasized the alternatives available in § 501(c)(4). 461 U.S. at 552. The opinion of Justice Blackmun suggested that if § 501(c)(4) did not exist, the denial of exemption under § 501(c)(3) would result in a denial of exemption even for non-lobbying activity and therefore result in an unconstitutional penalty on the exercise of free speech. But, because § 501(c)(4) exists, an organization need only create an affiliate to separate its non-lobbying activity from its lobbying activity. The conclusion that § 501(c)(4) in this way saves any constitutional defect in § 501(c)(3) is especially true with respect to H.R. 2897, which does not affect speech. Thus, Professor Tribe's objection was rejected by all nine justices in Regan.

The important constitutional distinction is between penalizing a person for the exercise of a right and denying a subsidy of the exercise of the right. Insofar as H.R. 2897 amounts only to a denial of a subsidy for abortion activity, it is entirely constitutional under Supreme Court precedent.

Very truly yours,

EDWARD R. GRANT,
Executive Director/General Counsel.
CLARKE D. FORSYTHE,
Staff Counsel.

AMERICANS UNITED FOR LIFE,
LEGAL DEFENSE FUND,
Chicago, IL, September 16, 1986.

Re H.R. 2897.

Senator GORDON HUMPHREY,
Senate Hart Building, Washington, DC.

DEAR SENATOR HUMPHREY: You asked this office to review the constitutionality of your bill (H.R. 2897), which would cut off tax exemption under both § 501(c)(3) and § 501(c)(4) of the Internal Revenue Code (IRC) for organizations which "perform, finance or provide facilities for any abortion." In our previous letter to you of 15 September 1986, we analyzed the constitutionality of such a cutoff of tax exemption under only § 501(c)(3) for any organization which engages in such activity. We concluded that a denial of exemption under § 501(c)(3) would be constitutional under *Regan* v. *Taxation With Representation.* 461 U.S. 540 (1983).

The latest draft of your bill (H.R. 2897) would cutoff tax exemption under both § 501(c)(3) (C3) and § 501(c)(4) (C4) and you have now asked us to analyze the constitutionality of a denial of exemption under both sections. The denial of tax exemption under § 501(c)(3) (and § 501(c)(4) is not constitutionally distinct from the denial of tax exemption under § 501(c)(3) alone. We provide the following analysis and conclude that a denial of exemption under both sections would be as constitutional as the denial of exemption under § 501(c)(3) alone.

In Regan, the Supreme Court held that Congress could constitutionally deny tax exempt status under § 501(c)(3) of the IRC for an organization where a sustantial part of its activity is the attempt to influence legislation. In a 9-0 decision, with three justices concurring, the Court, in an opinion written by Justice Rehnquist held that "both tax exemptions and tax deductability are a form of subsidy that is administered through the tax system", 461 U.S. at 544, and that Congress need not subsidize lobbying activity in any way.

The Court reasoned that the denial of exemption for lobbying activity, a form of free speech, did not violate the First Amendment by enacting an unconstitutional penalty because "the Code does not deny TWR the right to receive deductible contributions to support its non-lobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby. Congress has merely refused to pay for the lobbying out of public moneys. This Court has never held that the Court must grant a benefit such as TWR claims here to a person who wishes to exercise a constitutional right." Id. at 545.

The Court also held that the denial of exemption to TWR did not violate the Equal Protection component of the Fifth Amendment. Id. at 546-550. The Court reasoned that, since no fundamental right was infringed by the denial of subsidization, strict scrutiny need not be applied, and the denial of exemption was rationally related to a legitimate governmental interest. Id. at 549-550.

The reasoning of the Court in Regan directly applies to the denial of exemption under both § 501(c)(3) and § 501(c)(4) to abortion organizations and upholds such denial. Indeed, the Court in Regan implicitly foreshadowed a review of H.B. 2897 by citing the Court's decisions in *Harris* v. *McRae,* 448 U.S. 297 (1980) and *Maher* v. *Roe,* 432 U.S. 464 (1977) for the propositions that legislatures need not subsidize abortions. "We declined to strict scrutiny and rejected equal protection challenges to [those] statues." Id. at 549.

The reasoning of the Court in Regan indicates that the Court would treat the denial of exemption under C3 and C4 in the same manner that it treated the Hyde Amendment which denied funding for abortion. In other words, just as Congress may constitutionally decide not to fund abortion through appropriations, it may constitutionally decide not to subsidize abortion through tax exemptions or deductions. The Court in Regan said, "[f]or the purposes of these cases appropriations are comparable to tax exemptions and deductions, which are also 'a matter of grace that Congress can, of course, disallow . . . as it chooses." Id. at 549. Likewise, if Congress can constitutionally decide not to subsidize abortion activity under C3, it may also decide not to subsidize abortion under C4. Such a decision not to subsidize abortion activity leaves the door open for organizations to obtain tax exemption for non-abortion activity under C3 or C4.

Three justices who concurred in Regan argued that there was a "constitutional defect" under the First Amendment in C3 that was cured by a continued exemption for lobbying activity under C4. Id. at 552. This concurrence, however, was limited to First Amendment grounds. The justices otherwise concurred in the Court's opinion on Equal Protection grounds. Since H.R. 2897 does not affect speech but only performing, financing, or providing facilities for abortion, it would not be subject to a First Amendment challenge. In addition, even if those who concurred considered abortion as important as free speech, there were only three such justices.

Under your bill, organizations which perform, finance or provide facilities for any abortion would still be free to obtain tax exemption for any affiliate engaged in non-abortion activity. Professor Laurence Tribe, and Justice Blackmun in the footnote to his concurrence in Regan, make a distinction between the denial of welfare benefits for abortion, which is constitutional, and the denial of any welfare benefits if one has an abortion, which they suggest to be unconstitutional. Even conceding such a proposition, H.R. 2897 does not create such an effect. H.R. 2897 would not cut off tax exemption for non abortion activity.

Finally, H.R. 2897 cuts off tax exemption for the entire organization which engages in such abortion activity and does not distinguish between abortion activity and non-abortion activity within an organization. The effect thus is to require separate organizations or affiliations for abortion activity and non-abortion activity. Although Professor Tribe contends that this renders H.R. 2897 unconstitutional, similar language was reviewed in Regan with respect to lobbying activity and was upheld. We thus conclude that H.R. 2897 would withstand scrutiny.

Should you have any further questions or comments, please do not hesitate to contact us.

Very truly yours,

EDWARD R. GRANT,
Executive Director/General Counsel.
CLARKE D. FORSYTHE,
Staff Counsel.

Mr. HUMPHREY. Mr. President, I recognize that few Senators are in the Chamber and probably rather few are listening even at this hour since we did not leave here until 5:30 this morning. Therefore, I will appeal to staff to be especially acute in their listening this morning because I want to make this point that this is an amendment, however controversial it might have sounded last night, this is an amendment which a majority of Senators in this body can support consistent with their votes on the Hyde amendment over and over again in recent years.

The amendment before us, Mr. President, addresses the other side of the coin, the other side of the public funding of abortion coin. The Hyde amendment, as we all know by now, because we dealt with it for many years time after time and the Senate has time after time adopted Hyde amendment language which closes off Federal subsidy of abortion by means of cash outlays, we no longer lay out cash as a subsidy to the performance of abortion under Medicaid, under the DOD bill, the Peace Corps, Indian Health Services, and so forth. We restrict the Legal Services Corporation from engaging in litigation on the matter of abortion.

The point is we have now effectively closed out cash outlays as a subsidy for abortion and it is well that we have, and we are fully within our rights and fully within the Constitution to have done that. Indeed there have been suits challenging the authority and the constitutionality of the Hyde amendment and they have failed. The Supreme Court has upheld the right of Congress, the authority of Congress to refuse to subsidize abortion through cash outlays.

But a public subsidy still exists and that is the whole purpose of this amendment. Public subsidies still exist. They exist in the Tax Code. Organizations that perform abortions or finance abortions, many of them enjoy certain tax breaks under the Tax Code. They are tax exempt. Any revenue they come by in excess of costs are tax exempt and the continuance of these provisions in the Tax Code, the existence of these provisions in the Tax Code constitutes a subsidy in very much the same way, practically speaking, in the very same way that cash outlays constitute a subsidy of abortion.

Mr. President, Congress is well within its rights and within good judgment, I believe, to have cut off cash outlays for abortion. To cut off subsidies does not constitute an attack upon the exercise of a right. That is well established in law, well established in the Supreme Court cases.

We all have the rights under the Constitution. But the existence of those rights does not obligate our fellow citizens to subsidize the exercise of those rights.

We all have the right to free speech. For example, there are probably millions of Americans who like to write books. There may be even millions of unpublished manuscripts, surely hundreds of thousands, but there is no obligation on the part of Congress to subsidize the publication of those manuscripts.

Although I know that is not a realistic example, it makes the case, I think because Congress does not provide subsidies for publication of manuscripts does not constitute an attack upon the right to free speech nor does the refusal of Congress to subsidize abortions constitute in any way an attack upon the exercise of the right which the Supreme Court found in 1973, the right of a women to abortion. The refusal of Congress to subsidize abortion does not in any way constitute an attack upon the exercise of that right. That is well established, and that is the fundamental underpinning, the fundamental thinking of Congress in refusing to subsidize abortions through cash outlays.

That is why we adopted the Hyde amendment language. That is why the Court has upheld the Hyde amendment language. That is the critical central point of this whole debate, if I may say so.

It is that the refusal of Congress to subsidize a right does not constitute an infringement upon the exercise of that right. Nothing in this amendment seeks to strike the Supreme Court's 1973 Roe versus Wade decision. This is not an attack upon the right, although I would certainly admit as is well known I am an outspoken opponent of abortion, and hope some day to see that decision overturned and confident it will some day. That is not the point today. This is not an effort to overturn the Supreme Court decision. It is not an effort to infringe upon a woman's right as stated by the Supreme Court to abortion.

This addresses the matter of subsidizing public subsidies of abortion. This addresses the matter of whether Congress, this addresses the matter of whether each Senator in this body is going to require all of the citizens of the country through the Tax Code to subsidize abortion.

It seems to me it would be inconsistent for us to vote down this proposal when we have repeatedly upheld Hyde amendment legislation, not only in the Senate but in Congress and over and over again. It is well established now, well accepted. That is why I said at the outset that this is an amendment which a majority of Senators can support because a majority of Senators have supported Hyde amendment language.

If you are against subsidies for abortion, then it is perfectly consistent to be as much opposed to tax subsidies of abortion as it is to be opposed to subsidies which are cash outlays.

□ 1020

Mr. President, this amendment, if enacted, would affect providers of abortion, would affect those who provide facilities for the performance of abortion, and it would affect those who finance abortion.

Let me say whom it would not affect. First of all, the mechanism by which the subsidies would be affected is simply to withdraw the tax exempt status and the tax deductible status of abortion providers and financiers.

Who is not affected? First of all, for-profit institutions which perform abortions or make available facilities for abortions. They are not affected because for-profit institutions are not tax exempt. Furthermore, facilities of this kind that are owned by governmental entities are not affected by this amendment because governmental entities are not taxable at the Federal level and, therefore, there is no way you can withdraw their tax exempt status because they do not pay taxes and they are not liable to pay taxes to the Federal Government in the first place.

So this brings us down to a much smaller group. It brings us down to a group of abortion providers and financiers who are nongovernment and nonprofit.

Mr. President, all of this does address the fundamental issue of abortion. I want to conclude this part of my contribution to the debate by addressing the fundamental issue of abortion just briefly.

It is easy to view abortion as an abstract matter in all of these legalistic arguments, but let us remember that abortion is a concrete matter. As a fundamental matter, abortion involves the taking of human life. The offspring of human beings, after all, are human beings. That is a scientific and biological fact. The offspring of human beings are human beings. There is no doubt about it. It may be necessary, in a relatively few number of cases, in my opinion, it is necessary in a relatively small number of cases to permit abortion to save the life of the mother. But I think we all know and appreciate the fact that the vast majority of abortions in this country today, probably in the upper 90 percent, are purely for convenience and have nothing to do truly with the life of the mother or, in any significant way, her health.

But the Supreme Court says, in Roe versus Wade and the children of that decision, that a woman is entitled to an abortion if she wants to and that an abortion can be had if it affects her health in any way, including her mental health, which means, for all practical purposes, a woman can get an abortion any time she wants throughout her 9 months of pregnancy if she can find two doctors who will certify that she needs it for reasons of health, including her mental health.

That means, Mr. President, as a practical, concrete matter, not as an abstract matter, that millions of human beings have been destroyed by abortion. What a great violation of human rights. What a great degradation to the traditions of this country which rest upon that expression of Jefferson that all men are created equal and endowed by their Creator—not by Congress and not by the Constitution, but by their Creator—with certain inalienable rights, among which is the right to life, and that it is the purpose of government to secure that right and protect that right.

I hope that Senators will take a moment to reflect upon that truth, as I see it, and will not consider this to be an abstract matter.

Again, I remind Senators this is not an effort on this occasion to overturn the Supreme Court's decision. If enacted into law, this amendment will not in any way restrict the exercise of the rights the Supreme Court has found for abortion. All this amendment proposes to do is to end the taxpayers' subsidy of abortion.

We subsidize certain things in this society, certain things that we consider virtuous, like education, like churches and religious institutions.

Are we asked to tell the American people that killing unborn human beings is somehow to be equated with educating Americans and with lifting them up and maintaining them spiritually? What a ridiculous argument. This is not charity. Killing unborn human beings is not charity.

This activity does not qualify for a subsidy and Congress is perfectly within its rights to say so today and to end that subsidy, that tax subsidy, just as we have ended the subsidy which is cash outlays.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I rise to support the Humphrey amendment and to ask my colleagues to consider this amendment with the seriousness and gravity which it deserves and also to compliment my friend from New Hampshire for a very thoughtful and persuasive statement.

It would be very easy at this particular moment to just sort of say, "Well, it is the end of the session. We will be back to this another time. Let's handle this in some other way."

But, ladies and gentleman of the Senate, this is one of the most important votes that we shall cast this year or any year.

Mr. President, the Senator from New Hampshire has explained the underlying principle of law involved here, so I am not going to dwell on it. Obviously, the issue is easy to explain. It is simply whether or not we should continue to grant organizations which provide facilities or financing for abortions the privileged tax status—that is, the tax-exempt status—which is traditionally granted to organizations which perform charitable functions in this country.

It is a basic principle of taxation that there are certain kinds of activities we want to encourage in this country and we have given them a special status. Things like churches, synagogues, universities, scientific research, feeding the poor, missionary work, that kind of activity has been deemed broadly beneficial to society as a whole and deserving, therefore, of a very special privilege under our Tax Code. And I stress that, from a legal standpoint, it is a privilege. It is not a matter of right.

The Humphrey amendment would simply withdraw that privileged status and, in doing so, Mr. President, it would restore the status quo, so to speak, because at the time these tax laws were drafted and enacted by Congress there was no contemplation whatsoever on the part of any Senator or any Member of the other body that tax-exempt status would be afforded for performing or financing abortions. And I say that with great confidence because, at the time the statutes were granted and the theory of tax-exempt organizations were put into law, abortions were illegal throughout most of the country.

So we are not talking about a drastic departure, but really a return to the situation that obtained prior to the decision of the Supreme Court in the case of Roe versus Wade.

Mr. President, I happen to believe that abortion is morally wrong under most circumstances. But I want to stress for my colleagues and others who may be following this debate that it is not necessary to hold that view to understand the logic of the Humphrey amendment and to approve of its intent. On the ground of tax justice, it seems to me that the Humphrey amendment is well justified. And I hope there will be Senators who are just as disposed to think that this loophole had gotten too large and, as the Senator has pointed out, that since there are many lawful activities which we do not subsidize in this way, that this would be a good place to draw the line, for many reasons, not the least of which is having a tax-exempt status for performing or financing abortions, we are going contrary to the expressed view of a heavy majority of the people of this country.

Mr. STEVENS. Will the Senator yield right there for a minute?

Mr. ARMSTRONG. Mr. President, I am happy to yield briefly for a question.

Mr. STEVENS. Would the Senator apply the same justice to those who oppose the institutions and organizations who perform abortions or assist in abortions? In other words, if it is to be tax justice, should the Right to Life Committee and all those churches and others who oppose abortions similarly be denied their tax-exempt status?

Mr. ARMSTRONG. Mr. President, I am grateful to the Senator from Alaska for raising a very thoughtful question, because the Humphrey amendment has been carefully crafted, let me say to my friend, not to go to the question of advocating abortion. You can advocate abortion 24 hours a day, 7 days a week without losing your tax-exempt status. And, in exactly the same way, people who are against abortions enjoy a tax-exempt status in some cases; not in every case, but in some cases they do.

We are not running afoul here of the first amendment, nor are we running afoul of some idea of fair play, either.

What Senator Humphrey's amendment seeks to do is to withdraw the privileged tax status only for the performing of abortions or the financing or providing facilities.

□ 1030

Organizations which conscientiously wish to advocate this, if they qualify as tax-exempt organizations on other grounds, are permitted to do so. But let me shift gears because while I think tax considerations alone are sufficient to justify a vote for the Humphrey amendment, we all know that is not the underlying issue. The underlying issue is the sanctity of life.

I want to speak primarily this morning to those Members of the Senate who have come through thought and study, through considerations of the heart, and of scientific evidence to the recognition that sanctity of life is the issue, that these are unborn children whose lives are at stake, and that there is a great human tragedy taking place in this country. I judge that to be well over a majority of the Members of the Senate because on many occasions the Senate has seen fit to adopt the Hyde amendment. It is primarily to those Senators that I want to speak this morning, and to appeal to their conscience not to turn their back on this issue today.

I want to ask the Senators who recognize, who have come to a belief and on conviction, as I have, that these are human lives at stake, not to set that concern aside because we are all tired. There is a very heavy burden of fatigue on the Senate this morning.

But my dear friends, while we cannot hear the cries of these unborn children, we cannot turn our backs on them and say, well, we were too tired to take that issue up on Friday morning in October when we had a hard night. If you believe as I do that the issue is life, then that is more important then fatigue.

I also appeal to the conscience of those who have come to that conviction, that realization to lay aside the notion that somehow this is not the time and place. I anticipate that argument is going to be made that this is a continuing resolution, that after all we are just funding the Government for a limited period of time. This is not the moment to take up a bunch of policy issues. There is a certain appeal to that logic I would admit. But, Mr. President, that is a consideration which has been honored in the breach, not in the observance during the days in which this continuing resolution has been debated.

We have thought this was the time and place to take up flood control, airline mergers, national defense policy issues, farm issues and airlines, and many, many other unrelated matters which by no reasonable stretch of the imagination can be called co-opting appropriations.

So it would really be a breach of intellectual faith I think for somebody to say, well, I am for the principle but I am not for it right here and now because this is not the right place to do it. Let me say by the way the reasons why the Senator from New Hampshire offers this amendment here this morning, this day, on this bill is precisely because it was the will of an overwhelming majority of Members of this body that it not be offered on legislation to which it was both technically and conceptually germane; that is, to say the tax reform bill.

Senators may remember that when we were taking up the great tax

reform, there was an appeal to all Members to forego offering of amendments, even amendments which clearly were right in the spirit of the tax reform bill, in order to expedite that process. The President of the United States—who by the way supports the Humphrey amendment, and we have his written statement to that effect—said to Senator HUMPHREY and those who are backing the amendment, "Please do not offer it on this bill. We would be glad to support at another time, but for tactical reasons, it is important we get this rolling." That is why it is on this bill this morning. Having taken the step of adopting amendments on many, many other legislative subjects, it would really be a copout to say, well, we cannot stretch it to cover this.

Mr. President, I urge those who are concerned about the sanctity of life to lay aside their natural fear about the criticism they will receive for voting for this amendment. Make no mistake about it. Anybody who votes for this amendment is going to get a certain amount of criticism. They just are. I judge that criticism is likely with the passage of time to become more strident because, as public support for abortion continues to decline, and it is very clearly declining in this country, there is a certain hard edge beginning to present itself in the discussion of this issue and of public figures who oppose abortion by those who support it.

I just say to my colleagues in the words of former Member of this body, "There are just times when you got to do what you got to do." This is one of the things that, if you believe that the issue is life, the sanctity of life, "you got to do." You know, all of us in public life are going to get criticized for something. I think most of us would rather be criticized for something that is important, that is really a large matter of principle than to be criticized over something petty.

So I would not worry about that too much I would say to my colleagues. I hope Senators will lay aside concerns about whether or not this is going to be inconvenient even for some worthy organizations at home. There are going to be some organizations who are going to be inconvenienced when the Humphrey amendment is adopted because it is going to be adopted in my judgment at some point in time. I do not know whether that is going to be this morning. I hope it is. I do not know whether it is. But it is going to be adopted sometime because it is fair, because it is just, and because it is in accord with the beliefs of a heavy majority of people in this country in my opinion.

When it happens it is going to be inconvenient for some hospitals, and for some clinics who are going to have to stop performing abortions and many of them at least from what they tell me would like to do that, would like to have a good solid reason to say this is something we are not going to do any more. But there are some who are going to have to do a little reorganizing, who are going to have to make some decisions, are going to have to decide what their purpose really is, whether it is delivering babies and saving babies, treating disease, illness and broken limbs or whether it is to perform abortions. Probably some will decide one way and others will decide another. But it will be inconvenient.

But, ladies and gentlemen, we are talking about the loss of human life on a scale which is so much greater than any such consideration which is greater than the carnage on the highways, which is greater than the loss of life in the great wars in which our country has been involved, which is on a scale which just puts to rest any concern about how somebody might have to reorganize their corporations, or might have to make changes in their methods of operation.

Mr. President, I hope that Senators will lay aside the legal arguments that may be raised. Somebody is going to say, "Look, this doesn't sound like it is constitutional." It may not sound like it. But, Mr. President, I am advised by legal counsel that it will meet every test of constitutionality. The Supreme Court has ruled in *Lilly* v. *Commissioner*, 343 U.S. 90 (1952) that a Federal income tax deduction or exemption may be denied where the allowance of that deduction or exemption would frustrate a national or State policy. The Supreme Court also has ruled *Commissioner* v. *Sullivan*, 356 U.S. 27, (1958) that tax deductions and exemptions are a "matter of grace that Congress can, of course, disallow . . . as it chooses." Congress has already made the policy decision. We have decided that it is not the policy of Congress to subsidize abortion. We have adopted the so-called Hyde amendment, which restricts the use of Federal funds to finance abortions. Passage of legislation denying charitable tax-exempt status to organizations performing abortions is the logical extension of this Federal policy.

I note just for the Record that the Supreme Court has also ruled in the case of *Harris* v. *McRae* 448 U.S. 297, 1980, that the Hyde amendment now in law is constitutional.

So if somebody comes around and says this is going to run astray of the Constitution, I do not think they are on sound ground as a matter of law. One of the arguments that is going to be heard about this amendment may not be heard in the public debate, but I predict it will be heard in the well as Senators come to vote, is that by gosh, if this gets put on here, we are liable to be tied up for a couple of days. That is right. It could very well happen. I know there are Senators who are very determined that this matter would be discussed at great length, that it will be the subject of a filibuster.

And I just say to Senators, I am addressing myself now to those who think the issue is life, who have voted that way on previous occasions, who have stood up to be counted on the Hyde amendment. I say to them that if the issue is life, if we are talking about a million and a half unborn children, whose lives are at stake, if we are talking about the intellectual and moral integrity of a national policy that approves by granting tax-exempt status to organizations that perform such abortions, then the convenience of Senators, even if we are tied up for a little while for an extended period of time or a very long period of time, indeed is not very important.

Mr. President, a number of years ago a perceptive and wise journalist wrote that leaders are the custodians of the Nation's ideals, of its dreams, of its permanent beliefs, of the hopes it cherishes, of the things that make a nation out of a mere aggregation of individuals. We are the leaders. Today we are going to speak on whether or not sanctity of life is an important concern of ours as we vote on this amendment.

I hope Senators will vote life. I hope Senators will vote for the Humphrey amendment.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, my distinguished colleague from Colorado just made reference to the fact that there is a hard edge growing in this debate. That those who had stood for life, as he described it, are finding the attacks upon them bitter, mean, perhaps mean spirited. Indeed, he is right about the hard edge, although it is not all one sided. As someone who, for almost 20 years, has stood on the side of pro choice in favor of a woman's right to have an abortion if she wants to have one, I am familiar with the hard edge.

I am familiar with walking through picket lines and having picketers throw their signs at me to see if they could hit me. I am familiar with walking to a function one night with my wife and having a picketer spit on my wife.

□ 1040

So when he speaks of the hard edges, I am familiar with them. I find that as you go through life and as you go through politics, those on the extreme side of an issue are convinced that God speaks to them and only to them. And, that if you disagree, you are not on God's side. There is no possibility that honest men and women

can disagree and both be in good conscience.

We hear the reference to sanctity for life as if to say those who are on the pro choice side have no respect for sanctity for life. As if to say the Disciples of Christ Church, the Episcopalian Church, the Congregationalists, the Methodists and the Union of Hebrew Congregations, all of whom support a woman's right to decide for herself whether or not she wants to have an abortion, have no respect for sanctity for life.

We do not have to go back too many years to the Vietnam war era to remember the charges that those who voted for money for the war had no respect for sanctity of life. As I recall, we had amendments offered in this Senate which would have allowed people to deduct from their income tax a certain portion of the money that would otherwise go to the Defense Department because they did not want their money going to destroy sanctity for life.

Mr. President, this is a very diverse country. The safety in this country of our civil liberties is not to stand on the floor of the Senate and attempt to deny to others who hold a view in equally as good conscience as those who propose this amendment that they have no right to have a charitable contribution deducted from their income tax, or their organization has no right to have a tax-exempt status because they happen to believe in a woman's right to make a choice on abortion. They have no right.

I am not going to argue here whether or not the amendment is constitutional. I do not know if it is constitutional. I am sure it would be tested if it passed. The Court might find it constitutional and they might find it unconstitutional. I hope that is not the issue upon which the vote is pinioned here today.

I would like to think we would have a decent respect for each other's honestly held beliefs, so that the proponents of this amendment would be willing to say to those of us who disagree: "You do have a privilege—not calling it a right—to contribute to Planned Parenthood or others. Part of that contribution may be used to fund an abortion and you may still have a deduction because in a plural society of great diversity those honestly held views ought to be respected."

I want you to understand the amendment of the Senator from New Hampshire very carefully. There are two parts to it.

One, you lose your tax-exempt status if your organization performs, finances, or provides facilities for any abortion except where the life of the mother would be in danger, and so forth.

Then the second part: "You are denied a tax deduction for contributions to organizations which perform, finance or provide facilities for abortion," and so on.

Does that mean that the St. Luke's Hospital, a religious hospital, in San Francisco which performs abortions, will lose its tax-exempt status if it performs an abortion?

Does it mean that if you give to the religious organization that helps finance St. Luke's Hospital you lose your tax deduction as a contributor because you give to the church which gives part of this money to the hospital which performs abortions or refers other women to abortion services provided at an abortion clinic?

Or if you are from the University of Illinois which has a medical hospital that performs abortions, do you, as an alumni of the University of Illinois, lose your tax deduction for your contribution because you give it to the University of Illinois in an unrestricted manner and part of that might be used to fund abortions?

My hunch is yes, under the terms of this amendment, although we do not know. There has never been a hearing on this amendment. There has never been a request for a hearing on this amendment. We have never given any of the organizations that have grave reservations about this amendment an opportunity to come and testify. Let me read just some of those that have grave reservations: The Methodist Church, the American Hospital Association, the Association of American Medical Colleges, the American Hebrew Congregation, the Association of American Universities, the National Association of State Universities and Land Grant Colleges, to mention only a few.

Mr. President, I think those organizations do have a decent respect for sanctity for life. I think it is unfair to cast them into some kind of darkness, to say they have no respect for life because they are opposed to this amendment. They would like to have a chance to come and testify at hearings as to why they are opposed.

The Senator from Colorado was clearly correct in saying there will probably be a challenge on germaneness on this. This is clearly not germane. Here we are going to make a major change in tax policy. We are going to say to the perfectly well-intentioned contributor to any of our land grant colleges that have medical schools, "You will lose your right to tax exemption status."

That is a major substantive provision that does not belong in this bill.

However, I am willing to argue it on the same basis as my friend from Colorado. I am saying that liberty is protected in this country by diversity and respect for diversity. It is not protected by one group that feels so strongly about a subject that they want to deny to another group that holds contrary views in equally good conscience the same rights and privileges that the proponents of this amendment demand for themselves.

I ask unanimous consent that the following letters from a variety of organizations in opposition to the Humphrey amendment be printed in the CONGRESSIONAL RECORD immediately following my prior remarks.

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

AMERICAN COUNCIL ON EDUCATION,
Washington, DC, September 22, 1986.

DEAR SENATOR: On behalf of the American Council on Education, an association representing over 1,400 colleges, universities, and organizations in higher education, and the associations listed below, I strongly urge you to oppose an amendment which will be offered by Senators Armstrong and Humphrey. It is our understanding that the proposed amendment would deny tax-exempt status to any organization that performs, finances, or provides facilities for any abortion except when required to save the life of the mother.

This amendment could jeopardize the tax-exempt status of most major public and private universities that operate teaching hospitals, and the tax deductibility of charitable contributions to these institutions. These universities are accorded tax-exempt status and tax-deductibility to provide education, research, and training in all fields, including health. It would be inappropriate to deny tax-exempt status to these public purpose organizations because they offer a lawful medical service to their community.

Many nonprofit employers, like employers in the for-profit sector, provide pregnancy termination benefits under their health plans. Under the proposed amendment, all such nonprofit organizations could lose their tax-exempt status by providing such coverage. This would constitute a back-door revocation of the tax-exempt status of many nonprofit entities including colleges and universities, museums, hospitals, etc.

We urge you to reject this proposed amendment.

Sincerely,

ROBERT H. ATWELL.

The following associations join ACE in this statement:

American Association of Community and Junior Colleges.

American Association of State Colleges and Universities.

Association of American Universities.

National Association of State Universities and Land-Grant Colleges.

UNITED CHURCH OF CHRIST,
OFFICE FOR CHURCH IN SOCIETY,
Washington, DC, July 18, 1986.

DEAR SENATOR: It is our understanding that Senators Humphrey and Armstrong intend to attach the Humphrey amendment to some piece of "must-pass" legislation in the near future. The amendment would deny tax-exempt status and status as a charitable contribution recipient to organizations which perform, finance or provide facilities for abortions.

We wish to express our opposition to this amendment. This is an extremely mischievous piece of legislation posing a direct threat to our denomination and to similar denominations. We greatly resent this attack upon our church.

Our denomination has, on many occasions, reaffirmed its position of supporting freedom of choice. Our denomination has also founded several hospitals and still relates to these many health and welfare institutions.

It is unclear from the amendment whether our entire denomination would lose its tax exempt status, whether specific local churches who have pregnancy counseling programs or services would lose their tax exempt status, etc. It is certainly clear that our UCC related hospitals and health services would lose their tax exempt status, unless they chose to reject the United Church of Christ position on this religious issue and conform to this new legislation. This, in turn, will cause a crisis in relations between churches and their health and welfare institutions.

These are just some of the problems this legislation poses for our church. We certainly consider it a violation of the First Amendment. We cannot accept the State's directives as to what we must believe.

Further, this amendment will play major havoc with health care provision in this country, which we have already spelled out in a letter we co-signed with many other denominations.

We urge you to vote a strong NO on the Humphrey Amendment.

Sincerely yours,

JAY LINTNER,
Director, Washington Office.

PRINTON, KANE & CO.,
Short Hills, NJ, June 12, 1986.

Sen. BILL BRADLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR BRADLEY: On behalf of my firm, Printon, Kane & Co., a primary underwriter and secondary dealer of State and local municipal bonds, I wish to object to Senator Humphrey's proposed amendment to the tax bill.

Although I personally am strongly opposed to elective abortion on moral gounds and therefore its public funding, I don't believe his proposed solution is a viable one. Instead, the ability to restrict federal funding for hospitals on the analysis of elective or emergency abortion throws the basis for economic support on our health institutions into the courts. While the end result may be a noble one and one with which I agree, the financial chaos in the existing funding mechanism would be an economic disaster.

The capital programs for not only New Jersey hospitals but most other states is dependent upon municipal tax exempt financing. Since this function is clearly public purpose, that segment of the market has functioned better, i.e., lower rates, than others which have had their tax exempt status questioned such as I.D.B., certain housing bonds and power bonds. If the tax exempt eligibility of health care institutions is questioned along Senator Humphey's lines, then yet another area of the muncipal bond market will break down. Once the durability of the tax exempt status is left open to judgment or ex post facto analysis, then the cost of obtaining (legal opinion) becomes prohibited at best. The market will react efficiently, there will be a tiering effect on outstanding issues and new issues will have to carve out institutions which perform emergency procedures, i.e. abortions, from those serving other health care needs. This to me seems to be a very impractical financial solution to a complex moral question. Issuers, underwriters, bond counsels and the municipal bond market will react quickly and negatively. From past experience, once doubt is introduced into the municipal market, that segment pays the price for a long, long time.

Very truly yours,

THOMAS F. KANE,
Managing Partner.

ASSOCIATION OF AMERICAN MEDICAL COLLEGES,
Washington, DC, July 15, 1986.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of the Association of American Medical Colleges, which represents this nation's 127 medical schools, more than 450 teaching hospitals, and 83 professional academic societies, I strongly urge you to oppose the efforts of Senators Armstrong and Humphrey to introduce an amendment that would revoke the tax-exempt status of any not-for-profit organization that performs, finances, or provides facilities for any abortion, except those required to save the life of the mother. The amendment also would rescind the deductability of charitable contributions made to any organization, public or private, that performs, finances, or provides facilities for abortion.

Clearly, this provision would have major implications for the practice of medicine and for medical education and would reach beyond those immediately involved in the provision of this medical service to threaten the tax-exempt status of entire private universities and the charitable contributions made to public and private hospitals and universities involved in medical care.

This amendment would:

Force hospitals to choose between retaining their tax-exempt status and providing a legal medical service desired and used by members of the communities they serve;

Virtually preclude medical school faculty and teaching hospitals from training medical students and residents to safely and effectively care for pregnant women who have chosen to terminate their pregnancies.

Disproportionately curtail low-income patients' access to abortion services since not-for-profit and public hospitals provide the majority of medical services received by low-income patients.

Teaching hospitals and universities that have medical schools provide a wide variety of public services. Their status as non-taxable institutions and their ability to generate tax deductible contributions permits them to provide services to individuals and to support programs which otherwise they would be unable to offer.

On behalf of the nation's medical schools, universities, and teaching hospitals, I urge you to oppose any efforts by Senators Humphrey and Armstrong to attach this amendment to legislation.

Sincerely,

JOHN A.D. COOPER, M.D.

KAISER PERMANENTE,
Portland, OR, July 14, 1986

Hon. BOB PACKWOOD,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR PACKWOOD: We understand that Senator Gordon Humphrey plans to propose an amendment in the Senate that would revoke the tax-exempt status of any organization that directly or indirectly performs, finances or provides for any abortion. We are strongly opposed to this threat to our tax-exempt status and urge you to vote against it.

Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals are part of a non-profit health care delivery system that provides comprehensive health services on a prepaid direct service basis to almost 5 million members in 16 states. More than 290,000 Oregonians are Health Plan members, served by more than 4,000 employees and the more than 340 physicians of Northwest Permanente, P.C.

We believe the Humphrey amendment would establish a dangerous precedent under which the Congress and the Internal Revenue Service could be pressured to apply equally inappropriate criteria to tax exemption determinations. The possibilities for carrying this principle forward to other medical practices and other litmus tests are endless.

We hope we can count on you to oppose the Humphrey Amendment.

Sincerely,

MICHAEL H. KATCHER,
Sr. Vice President, and Regional Manager.
FRED M. NOMURA, M.D.,
Regional Medical Director.

[Letter sent to all Members of the Senate]

AMERICAN MEDICAL ASSOCIATION,
Chicago IL, September 19, 1986.

Re: Humphrey Amendment on Abortion.

DEAR SENATOR: The American Medical Association understands that Senator Humphrey intends to offer an amendment to a "must-pass" bill that would deny tax exempt status to organizations which directly or indirectly perform, finance, or provide facilities for abortions (except to prevent the death of the mother). The Humphrey amendment would also deny the affected health care organizations' eligibility to receive tax-deductible contributions.

This amendment is guaranteed to achieve only one thing—the disruption of health care in our nation. This amendment would inappropriately affect non-profit hospitals, health maintenance organizations, health centers, many Blue Cross and Blue Shield plans, and major philanthropic organizations.

The issues of abortion and taxes each deserve to be considered separately and on their own merits. We urge you to oppose the Humphrey amendment.

Sincerely,

JAMES H. SAMMONS, M.D.

HFMA,
Washington, DC, July 25, 1986.

DEAR SENATOR: The Healthcare Financial Management Association (HFMA) opposes an amendment that Senator Gordon Humphrey has indicated he will offer on a "must pass" piece of legislation. The amendment would deny tax-exempt status to any organization that performs, finances, or provides abortion facilities. Also, contributions to these organizations would not be tax deductible and they would be ineligible for tax-exempt financing.

HFMA is a professional membership society composed of more than 25,000 individual members. These members share an interest in the financial management of institutional healthcare providers. Changes in the tax status of these organizations is of great interest of HFMA members.

HFMA opposes this amendment because of its serious adverse financial impact on

nonprofit hospitals in every state. More than 900 hospitals would lose their tax-exempt status under this proposal. Also, if the amendment is narrowly interpreted, over 3,000 hospitals would be denied tax exemption.

The basic rationale for providing tax-exempt status to hospitals was to recognize that hospitals serve an essential public purpose of providing health care. The proposed amendment would reverse the intent of prior law without reexamining the original purpose of the tax exemption. Denying tax-exempt status would eliminate the two most important sources of capital for these organizations—philanthropy and tax-exempt bonds. In addition, these organizations would be subject to income tax. No hearings have been held on issues raised by the amendment. Accordingly, it has not been subject to the scrutiny essential for such a far-reaching proposal. The proposal conflicts with court rulings which require hospitals to provide facilities and staff for the performance of elective abortions.

The essential public purpose which tax exemption of hospitals facilitates, access to capital for these organizations, the lack of public hearings, and the conflict with court decisions must be examined before a measure such as the Humphrey amendment is enacted. For the reasons enumerated, and because the amendment process is not an appropriate focus for debate on this subject, we strongly urge you to oppose Senator Humphrey's amendment.

Sincerely,

R.R. KOVENER,
Vice President.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, July 22, 1986.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of the American Hospital Association's 5,600 health care institutions I am writing to oppose an amendment that may be offered by Senator Humphrey to deny status as a tax-exempt organization, and as a charitable contribution recipient, for organizations that perform, finance, or provide facilities for abortion.

AHA opposes the Humphrey amendment because it would have a serious financial impact on needed community, nonprofit hospitals in every state. More than 900 community, nonprofit hospitals could lose their tax exemption if the Humphrey amendment were narrowly interpreted; under a broader interpretation, every community, nonprofit hospital—over 3,300 in all—would be denied tax-exempt status.

These hospitals also would lose access to their two most important sources of capital: philanthropy and tax-exempt bonds. These institutions serve an important public purpose; they are created, supported, and directed by communities to support the public hospital system that has the basic responsibility for ensuring public health.

Furthermore, AHA believes the proposed amendment has implications well beyond the sponsor's stated intention. No hearings have been held on issues raised by the amendment; it has not been subject to the scrutiny demanded by such a far-reaching proposition.

The amendment also would put health care institutions at odds with their present responsibilities in these cases. For example, the New Jersey Supreme Court has ruled that nonsectarian, nonprofit hospitals are under legal duty to provide facilities and staff for the performance of elective abortion [*Doe* v. *Bridgeton Hospital Association, et al.*, 71 NJ 478 (1976), cert. denied 433 U.S. 914 (1977)].

The AHA urges you to oppose the Humphrey amendment to deny tax-exempt status to organizations that fund or provide facilities for abortions.

Sincerely,

JACK OWEN,
Executive Vice President.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, July 21, 1986.

Hon. ROBERT PACKWOOD,
Russell Office Building,
Washington, DC.

DEAR SENATOR PACKWOOD: We understand that Senators William Armstrong and Gordon Humphrey are planning to offer an amendment to the Debt Ceiling or some other "must pass" legislation later this month that would deny tax-exempt status to any hospital or institution that performs, finances, or provides facilities for any abortion . . ." It would further disallow tax deductions for charitable contributions made to such institutions.

We strongly oppose this amendment and urge its defeat. We believe the amendment is an unconstitutional infringement on the right of choice. The effect of such a broad denial of tax-exempt status would be to dramatically reduce the availability of abortion services to pregnant women choosing to exercise their constitutionally protected right to choice. The "Humphrey" Amendment would, therefore, impose a significant government-created barrier to the right to abortion.

Moreover, the proposed amendment would exact a substantial and unconstitutional penalty on the private funding of a wide range of organizations which choose to provide or finance abortion related services. We believe that the Congress may not use its taxing power to punish those who engage in constitutionally protected activity.

Finally, we believe that the "Humphrey" amendment is unwise as a matter of public policy. It would set a disturbing precedent that would expose private charities to the shifting sands of public sentiment, and embroil Congress in divisive debates over the "charitable" nature of a variety of constitutionally protected activities.

We applaud your leadership in seeing that this amendment and any similar amendments are defeated.

Sincerely,

MORTON H. HALPERIN,
Director, Washington Office.
LESLIE HARRIS,
Legislative Counsel.

AMERICAN PROTESTANT HEALTH ASSOCIATION,
Schaumburg, IL, July 17, 1986.

OPPOSITION TO HUMPHREY AMENDMENT

DEAR SENATOR: The American Protestant Health Association, representing over 300 hospitals and associated facilities nationwide, opposes an amendment that may be offered by Senator Humphrey on the Senate floor that would deny eligibility as a charitable organization to institutions that perform, finance or provide facilities for abortions.

While the Association's membership includes hospitals with differing positions on abortion, with each member hospital setting its own policies on this matter, the Association strongly believes that no hospital should have its 501(c)(3) status decided on the basis of its position with regard to this particular issue, or any other issue that does not represent a valid test of whether the institution's purpose is charitable.

The American Protestant Health Association asks that you oppose the amendment, on the basis that its reach is so broad, that it will evitably disrupt the ability of our hospitals to perform their mission of providing health care to the people of this nation.

Thank you for your consideration of our position.

Sincerely yours,

CHARLES D. PHILLIPS, ED.D.,
President.

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, MA, July 29, 1986.

An open letter to all Senators:

I understand that Senator Humphrey plans to propose an Internal Revenue Code amendment that would deny tax benefits (exempt status and contribution deductions) to hospitals and other institutions otherwise tax exempt if they perform, finance, or provide facilities for abortion. Quite apart from the tax neutrality arguments against such an amendment, Senators should be aware that the amendment would, in all likelihood, violate the Due Process Clause of the Fifth Amendment to the United States Constitution. Although Congress is free to withhold federal subsidy from the exercise of fundamental rights such as the right to terminate a pregnancy, see *Harris v. McRae*, 448 U.S. 297 (1980), and accordingly may act to prevent institutions from using tax-deductable contributions to fund such exercise, see *Regan v. Taxation With Representation*, 461 U.S. 540 (1983), it is equally well settled that "the government may not deny a benefit to a person because he exercises a constitutional right," *id.* 545, see *FCC v. League of Women Voters*, 104 S.Ct. 3106 (1984). Unlike the decision of Congress to withhold tax benefits from otherwise eligible organizations that engage in substantial lobbying activities—a decision upheld in *Taxation With Representation*—the Humphrey amendment would not contain a proviso permitting hospitals and other institutions to retain tax benefits for their other activities so long as they confine the ineligible activities (i.e., performing or financing abortions) to controlled but distinct affiliate entities. The upshot is that what Senator Humphrey proposes would go beyond a congressional refusal to subsidize abortions and would amount, in effect, to a congressional penalty on constitutionally protected abortion choices—no less so than if Congress were to withhold food stamps or other benefits from families any of whose members had chosen abortions.

Sincerely,

LAURENCE H. TRIBE,
Tyler Professor of Constitutional Law.

AMERICAN COUNCIL ON EDUCATION,
OFFICE OF THE PRESIDENT,
Washington, DC, July 23, 1986.

DEAR SENATOR: On behalf of the American Council on Education, an association representing over 1,400 colleges, universities, and organizations in higher education, and the associations listed below, I strongly urge you to oppose an amendment which may be offered by Senators Armstrong and Humphrey. It is our understanding that the proposed amendment would deny tax-exempt status to any organization that performs, fi-

nances, or provides facilities for any abortion except when required to save the life of the mother.

This amendment could jeopardize the tax-exempt status of most major public and private universities that operate teaching hospitals, and the tax deductibility of charitable contributions to these institutions. These universities are accorded tax-exempt status and tax-deductibility to provide education, research, and training in all fields, including health. It would be inappropriate to deny tax-exempt status to these public purpose organizations because they offer a lawful medical service to their community.

Many nonprofit employers, like employers in the for-profit sector, provide pregnancy termination benefits under their health plans. It would seem that under the proposed amendment, all such nonprofit organizations would lose their tax-exempt status by providing such coverage. This would constitute a back-door revocation of the tax-exempt status of many nonprofit entities including colleges and universities, museums, hospitals, etc.

We urge you to reject this proposed amendment.

Sincerely,

ROBERT H. ATWELL.

The following associations join ACE in this statement:

American Association of Community and Junior Colleges,

Association of American Universities,

National Association of State Universities and Land-Grant Colleges.

GENERAL BOARD OF CHURCH AND SOCIETY, THE UNITED METHODIST CHURCH,

Washington, DC, July 23, 1986.

Hon. BOB PACKWOOD,

U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: We are writing to express our opposition to the Humphrey amendment, which Senators Humphrey and Armstrong intend to attach to some piece of "must-pass" legislation in the coming days or weeks. The amendment would deny tax-exempt status and status as a charitable contribution recipient to organizations which perform, finance or provide facilities for abortions.

The amendment would place nonprofit hospitals and other organizations in the untenable position of choosing between their economic solvency and providing legal medical services. The amendment would even force hospitals in states which are under court order to provide abortion services to lose their tax-exempt status.

We are opposed to this amendment because it would have a devastating effect on the provision of health care services in the United States, as well as on the social service agencies and philanthropic organizations which support them. Under the proposed amendment, organizations that could lose their tax-exempt status include: nonprofit community hospitals, freestanding health clinics, health maintenance organizations, tax-exempt health insurance plans, medical schools and their affiliated universities, foundations and other philanthropic organizations, and social service agencies. Even agencies which provide only nondirective pregnancy counseling and referrals—which are required by standards of medical practice and protected by the constitutional guarantees of freedom of speech—would be threatened with the loss of their tax-exempt status.

If interpreted broadly, the Humphrey amendment would even threaten the tax-exempt status of mainline Protestant, and Jewish faith groups and religious organizations with policies that support freedom of choice in reproductive health care. It would also deny tax-exempt status to religiously affiliated hospitals and individual congregations where clergy provide problem pregnancy counseling.

Furthermore, we have serious doubts about the constitutionality of the Humphrey amendment. It is not a simple extension of the Hyde amendment, as its supporters claim, because it does not seek to prohibit the use of Federal funds for abortion services. Rather, it is intended to impose sanctions against nonprofit organizations and individual taxpayers who choose to provide or support abortion services, in spite of the fact that the Supreme Court has ruled that the right to abortion is protected by the Constitution.

The Supreme Court has held that the government may not place undue obstacles in the path of women choosing to exercise their constitutional rights, and we believe that the Humphrey amendment does place such obstacles in the way of the right to privacy and vital First Amendment rights.

We believe that the amendment would have a disastrous effect on our nation's health care system, and severely restrict the ability of nonprofit community hospitals, health and community service agencies, charities and foundations, and even religious organizations, to carry out the vital role they play in providing health care services. We therefore urge you to vote against the Humphrey amendment when it is offered. Thank you for your consideration.

Sincerely yours,

Rev. Donna Morton-Stout, Esq., Associate General Secretary, Issue Development and Advocacy, General Board of Church and Society, The United Methodist Church.

Rabbi Alexander Schindler, President, Union of American Hebrew Congregations.

Isaac Asimov, President, American Humanist Association.

Theodore R. Mann, President, American Jewish Congress.

Irma Gertler, President, B'nai B'rith Women.

Carol Cole Flanagan, President, Episcopal Women's Caucus.

Barbara A. Nandel, National President, National Council of Jewish Women.

Rev. Kenneth C. Senft, Executive Director, Lutheran Church in America, Division for Mission in North America.

Dr. John M. Swomley, Jr., President, Americans for Religious Liberty.

Dolores Wilkenfeld, President, National Federation of Temple Sisterhoods.

Rev. James A. Hamilton, Director, Washington Office, National Council of Churches of Christ.

Rev. Jay Lintner, Director, Washington Office, Office for Church in Society, United Church of Christ.

Rev. George Chauncey, Mary Jane Patterson, Directors, Washington Office, Presbyterian Church (U.S.A.).

Rev. Robert W. Tiller, Director, Office of Governmental Relations, American Baptist Churches, U.S.A.

Rev. Leland Wilson, Director, Washington Office, Church of the Brethren.

Burton Citak, Co-Chairman, Commission on Social Policy, United Synagogue of America.

Mary Kercherval Short, Secretary of Women's Concerns, Christian Social Relations, Women's Division, General Board of Global Ministries, the United Methodist Church.

Faith A. Johnson, Secretary, Human Development: Family, Children, and Sexuality, United Church Board of Homeland Ministries, United Church of Christ.

Sr. Deborah J. Barrett, SFCC, Esq., Executive Director, Catholic Women for Reproductive Rights.

Robert Z. Alpern, Director, Washington Office, Unitarian Universalist Association of Congregations in North America.

Hyman W. Bookbinder, Washington Representative, American Jewish Committee.

Carole Goodspeed, Director, Committee on Women's Concerns, Presbyterian Church (U.S.A.).

Helen Parolla, Director of Public Policy and Public Affairs, YWCA National Board.

Dr. Elizabeth H. Verdesi, Associate for Council on Women and the Church, Presbyterian Church (U.S.A.).

National Coalition of American Nuns.

JULY 22, 1986.

DEAR SENATOR: Senator Humphrey, we understand, will propose an Internal Revenue Code amendment to deny tax benefits (exempt status and contribution deductions) to various hospitals and other institutions, otherwise tax exempt, that perform, finance or provide facilities for abortion. We write to urge the defeat of this proposal.

We write as tax professionals. All of us are lawyers or law professors who practice or teach in the field of federal taxation. A number of us chaired the tax sections of various bar associations. A number served in positions of responsibility in the Treasury Department, the Internal Revenue Service, the Department of Justice, and on Capitol Hill, some in Republican administrations and others in Democratic administrations. All of us hold a keen interest in better, more rational federal tax law; for that reason, all of us applaud the current Congressional effort to achieve genuine tax reform.

Senator Humphrey's proposal, to use tax provisions to promote controversial social policy, runs directly counter to the salutary concept of tax neutrality that fuels the current Congressional tax reform endeavor.

Departing from wise and settled Congressional practice, the proposed amendment would embroil the tax law and the Internal Revenue Service in matters that properly are not the business of neither, and would thus provoke disrespect for both.

Our strong view that the amendment should be rejected does not proceed from any unanimous position on the social policy it is intended to promote. Some of us favor free access to abortion, others would substantially restrict that opportunity. Still others regard this divisive issue as one that should be resolved, not by federal dictation, but state by state, through the local political process. Whatever our respective views on abortion, we are clear that federal regulatory intervention through the Internal Revenue Code would be bad for the tax system and contrary to the national interest.

Sincerely,

IRS: Mortimer M. Caplin, N. Jerold Cohen, Sheldon S. Cohen, Kenneth W. Gideon, Frederick Goldberg, Crane C. Hauser, Jerome Kurtz, Stuart E. Seigel, Randolph W. Thrower.

Capitol Hill: Edward J. Hawkins, Mark L. McConaghy, Bernard M. Shapiro.

Other: M. Bernard Aidinoff, Hugh Calkins, Richard G. Cohen, Thomas F.

Field, Martin D. Ginsburg, Vester T. Hughes, Jr., James B. Lewis, Johannes R. Krahmer, Thomas A. Troyer, Bernard Wolfman.

Treasury: John E. Chapoton, Edwin S. Cohen, David G. Glickman, Daniel I. Halperin, Frederic W. Hickman, Donald C. Lubick, John S. Nolan, Ronald A. Pearlman.

Justice: M. Carr Ferguson, Jr., Erwin N. Griswold, John B. Jones, Jr., Jack S. Levin.

UNITED CHURCH OF CHRIST,
OFFICE FOR CHURCH IN SOCIETY,
Washington, DC, July 18, 1986.

Hon. GORDON J. HUMPHREY,
U.S. Senate, Washington, DC.

DEAR SENATOR HUMPHREY: Attached is a copy of a letter we have sent to the Senate.

In this letter we raise a number of concerns. Perhaps you can provide some answers, at least from your perspective.

Since our tax-exempt status as a denomination grants blanket federal income tax exemption to local churches, national Instrumentalities, Health and Welfare Institutions related to the United Church of Christ, etc. under group exemption 1665, does this mean that the passage of your amendment will take away the tax exempt status of our entire denomination? Would your amendment require our churches and institutions to refrain from communicating our church's teachings on this issue?

Is it your intent to take away tax exempt status of local churches whose clergy provide counseling or who provide other services related to abortion counseling?

It appears your amendment would require hospitals and clinics related to our church to choose between federal policy and the teachings of our church. How do you propose that this dilemma be resolved?

We have other questions about this unfortunate legislation, but these are paramount.

Sincerely yours,

JAY LINTNER,
Director, Washington Office.

NATIONAL FAMILY PLANNING AND REPRODUCTIVE HEALTH ASSOCIATION, INC.,
Washington, DC, July 15, 1986.

DEAR SENATOR: During the Senate's recent debate over tax reform legislation, Senator Gordon Humphrey proposed an amendment which would have denied tax-exempt status to any organization which performs, finances, or provides facilities for abortion. Senator Humphrey eventually withdrew the amendment, but promised to raise the issue again in the next few weeks in conjunction with a piece of "must-pass" legislation. On behalf of the National Family Planning and Reproductive Health Association and the family planning providers and consumers it represents, I urge you to oppose the Humphrey amendment when it comes before the Senate again this summer.

We are particularly concerned about the Humphrey amendment's effect on family planning providers. No hearings have ever been held on the amendment and its full scope is not yet known. However, we believe that the Humphrey amendment, if interpreted broadly, would deny tax-exempt status to family planning agencies that simply counsel and refer for abortion, even if they do not perform abortion procedures themselves. Medical ethics and state laws require family planning professionals discuss all legal medical options with their patients facing unintended pregnancies. Thus, Mr. Humphrey's amendment could force all competent not-for-profit family planning agencies to close their doors, thereby denying access to high quality primary health care services to millions of low-income women and adolescents.

Moreover, the Humphrey amendment would set a dangerous precedent for tax policy. For the first time, benefits under the tax code would be denied to individuals and agencies simply because they engage in controversial, yet constitutionally-protected and legal activities. Under such a precedent, Congress is susceptible to pressures to deny a host of tax benefits to any individual, agency or group that does not meet with universal acclaim, including, for example, religious sects, publishers of controversial literature, educational institutions or health care providers.

In short, the Humphrey amendment has serious implications for thousands of nonprofit, charitable and tax-exempt institutions, and has not been adequately examined. We believe that the amendment would severely restrict the availability of all reproductive health services, not just abortion procedures. We urge you to oppose the Humphrey amendment.

Sincerely,

SCOTT R. SWIRLING,
Executive Director.

BLUE CROSS AND BLUE SHIELD ASSOCIATION,
Washington, DC, July 21, 1986.

Hon. BOB PACKWOOD,
Chairman, Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC. 20510

DEAR SENATOR PACKWOOD: On behalf of the Blue Cross and Blue Shield Association and its member Plans, I am writing to oppose efforts such as S. 2382 that would deny tax-exempt status to organizations that finance abortions. Should an action of this nature become law, Blue Cross and Blue Shield Plans would likely lose their tax exemption.

The added burden of federal taxes would unavoidably increase premiums for many of our subscribers and force Plans to be more selective in the risks they are willing to accept. Both of these outcomes would seriously reduce access to protection against the cost of health care.

The carte blanche denial of tax exemption to organizations that finance a recognized medical procedure would not in any way address the moral questions surrounding the issue of abortion. It would, however, raise the cost of health care protection and, in many cases, eliminate the only protection currently available to the higher risk segments of our populations. This is not sound public policy.

We applaud your efforts to reject changes in the tax code that would have unintended, but very serious, consequences for millions of Americans.

Sincerely,

MARY NELL LEHNHARD.

UNION OF AMERICAN HEBREW CONGREGATIONS,
New York, N.Y., September 23, 1986.

DEAR SENATOR: The Union of American Hebrew Congregations, representing 1.3 million Jews in the United States and Canada, strongly opposes the anti-abortion amendment to the Continuing Resolution which Senator Humphrey is expected to offer this week. The amendment could deny nonprofit tax status to organizations providing abortion-related services.

This amendment could well threaten the financial status of hospitals, social service agencies, philanthropic organizations and individual health care providers. Because its provisions are ill-defined, a broad interpretation of the amendment could jeopardize religious organizations and political advocacy groups. Tax-exempt status could even be denied to individual congregations whose clergy counsel on problem pregnancy options in the privileged context of clergy-congregant communications.

The Jewish community has generally opposed all attempts to restrict a woman's right of reproductive freedom, not because we are pro-abortion but because we strongly believe that this is an improper intrusion of government into the private life of an individual. Jewish tradition does not offer blanket support or prohibition of abortion. There are circumstances in which abortion is not only permitted but mandated. Any legislation in this sensitive area encroaches upon the religious freedom of all Americans to conduct their lives according to the teachings of their faith.

The proposed amendment is another attempt by the legislature to restrict women's constitutional rights and religious freedom which have been upheld by the Supreme Court's affirmation of a woman's right to choose abortion.

We urge you to vote against this amendment and to reject all other amendments that would weaken international or domestic family planning by limiting a woman's right of choice.

Sincerely,

RABBI ALEXANDER SCHINDLER,
President.

BEAR STEARNS,
June 11, 1986.

Senator BILL BRADLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR BRADLEY: You have requested our views on the proposal recently made by Senator Humphrey of New Hampshire to amend section 501 of the Internal Revenue Code to eliminate tax-exempt status from any organization which "performs, finances or provides facilities for any abortions except where the life of the mother would be endangered if the fetus were carried to term."

Exempt status under section 501 is a prerequisite for a hospital which desires to undertake a tax-exempt financing. Public tax-exempt financing is the primary source of funding for non-profit health care providers. This form of financing gives these providers increased access to capital to modernize and expand health care facilities and to make major equipment purchases. It also enables providers to advance refund high interest debt and thereby reduce interest and ultimately health care costs. Finally, pooled financings, that were responsible for a significant portion of tax-exempt financing for 501(c)(3) health care institutions last year, permit many health care providers over a wide geographic area to finance economically their needs, as well as permit smaller and less credit-worthy health care institutions, which would not otherwise be able, to raise capital and to access public markets.

The Bond Buyer, the major trade publication for the tax-exempt bond market, has reported that last year, tax-exempt health care organizations raised a record $31.24 billion in the public tax-exempt market. How-

ever, tax-exempt financings for health care organizations plummetted in the first quarter of 1986 to 12 issues totaling $99.4 million. * * *

We believe that the uncertainties which would be created by the proposed amendment to section 501 of the Internal Revenue Code would have a further negative impact on the tax-exempt health care bond market. For instance, litigation in which it was asserted that a particular institution performed an abortion which was not "life-preserving" (regardless of whether or not this assertion was ultimately proven correct) could actively thwart for years that institution's ability to raise funds in the tax-exempt bond market. Further, the tax-exempt status of bonds currently outstanding for that institution would be open to question, potentially causing prices to plummet. Of course, outstanding litigation of any sort always adds a degree of uncertainly to an issuer's ability to finance its activities; however, this uncertainty is compounded on a daily basis by the difficulty in determining whether a particular abortion was performed where the life of the mother was endangered without the abortion.

This uncertainty would also attach to state and local agencies that issue tax-exempt bonds to provide funds to health care providers, including institutions which do not perform abortions (e.g. nursing homes, hospices and certain hospitals). Under the proposed amendment, the tax-exempt status of these agencies would be called into question each time one of the hospitals which they fund performed an abortion. Furthermore, if this proposal were to be enacted, bondholders of bonds issued for health care pooled financings could find that the tax-exempt status of their bonds has been eliminated. Because of the larger member of hospital participants in these pools, they become more vulnerable.

It should be noted that a large number of tax-exempt health care institutions provide abortion services. Thus, more than 900 community, non-profit hospitals would lose their tax exemption if the Humphrey proposal were narrowly interpreted, and several thousand community, non-profit hospitals would be denied tax-exempt status under a broader interpretation.

We believe that the proposed amendment to section 501 of the Internal Revenue Code would severely impact the ability of all health care issuers, including those which do not perform abortions, to raise funds in the public tax-exempt markets.

Sincerely,

JOSEPH M. GIGLIO,
Managing Director.

VOLUNTEER TRUSTEES OF
NOT-FOR-PROFIT HOSPITALS,
July 15, 1986.

Hon. ROBERT PACKWOOD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: We are writing to urge defeat of the impending "Humphrey Amendment" which would deny tax exempt status to health care institutions providing abortions. As trustees of not-for-profit hospitals across the country, we are alarmed by the use of the 501(c)(3) tax status as the vehicle for the debate of this important social issue.

As a society, we grant tax exemption to voluntary hospitals because they perform a public service that would otherwise fall to government. Their assets belong to the community; their profits accrue to the community; and, their services are determined by community demand in accordance with the laws of the land.

Tax-exempt status is not a handle for social change. As long as it is seen as a short-term expedient that can be wielded like a weapon over the heads of our communities, it is a constant threat to our voluntary health care system. Even abortion, an issue that challenges our deepest values and morality, should not be allowed to undermine the mission of that system.

Voluntary hospitals are community-owned, and community-run. The span of services they provide is vast and all-encompassing, from meals-on-wheels to heart-lung transplants to hospice. It is the home of private sector clinical research, medical education, care for the poor, technological development, tertiary care and chronic care. It is the training ground for our medical professionals and the underpinning of our nation's medical excellence. In some cases it is the provider of abortions.

Tax status must not become Congress' whipping boy in the battle for social change. Abortion can and should be debated on its own merits. It is not a tax issue; nor should it be cast as a hospital issue. No coherent health care policy objective is achieved by forcing abortion into the for-profit and public sectors alone. If abortion is the social issue then let us address it.

We need to put to rest the perception that 501(c)(3) hospitals are the ever-available vehicles of reform for all of our social problems. Let them remain instead the ever-available providers of community health care services as they were designed by law to be.

Sincerely,

BENJAMIN R. STURGES,
Chairman of the Board.

American Psychological Association,
Washington, DC, July 22, 1986.

Hon. BOB PACKWOOD,
Russell Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing on behalf of the 87,000 members of the American Psychological Association to express our concerns with respect to the amendment which Senator Humphrey intends to offer which would revoke the tax-exempt status of organizations that perform, finance, or provide facilities for abortions not necessary to save the life of a pregnant woman. This amendment represents a clear attempt to circumvent recent Supreme Court decisions and deny many women their constitutionally protected right to terminate a pregnancy.

This issue is of considerable concerns to the members of the American Psychological Association. As practitioners and researchers, psychologists understand that unwanted childbearing had severe health, social, and psychological consequences. Health problems include increased risk for illness or death for both mother and child. In addition, unwanted childbearing has been linked with a variety of social problems, including divorce, poverty, child abuse, and juvenile delinquency. Studies have found that unwanted children are less likely to have a secure family life. As adults, they are more likely to engage in criminal behavior, be on public assistance, and receive mental health services.

The adverse consequences of teenagers' inability to control their childbearing are particularly severe. Aside from the well-known health risks associated with being the child of a child, research has established that their social and psychological problems persist, largely due to the lack of education and poor employment prospects of their teenage mothers. Children born to teenagers are more likely to have lower intelligence and achievement test scores and poorer school adjustment. The problems are particularly severe for the more han 80 percent of these children of teens who are unwanted.

Access to abortion continues to play an important role in the prevention of unwanted births. Research has found that when abortion is denied, the resulting children are more likely to have a variety of social and psychological problems, even when they are born to healthy adult women with intact marriage and adequate economic resources. Such children have poorer grades in school, are less liked by other children, and are regarded by teachers and parents as more irritable and anger prone. Their poorer school performance increases with age, becoming highly significant by adolescence.

It is important to recognize that these adverse effects are not shared equally by all segments of our society, but fall more heavily on those who are poor, black, or young, the very groups of persons who receive services from those organizations targeted by the Humphrey amendment. Yet, the evidence suggests that even in advantageous social and economic circumstances, when a pregnancy is unwanted and the woman requests an abortion, to deny it forces her to bear a child at risk for psychological problems that are long lasting. In this context, the watchword of the family planning movement—"Every Child a Wanted Child"—has particular meaning for psychologists.

For these reasons, the American Psychological Association opposes the Humphrey amendment. We greatly appreciate the leadership you have shown over the years on this issue, and urge you and other members of the Senate to defeat this attempt to restrict the availability of a constitutionally protected medical procedure.

Sincerely,

LEONARD D. GOODSTEIN, Ph.D.,
Executive Officer.

VOLUNTEER TRUSTEES OF
NOT-FOR-PROFIT HOSPITALS,
Washington, DC, July 15, 1986.

Hon. ROBERT PACKWOOD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: We are writing to urge defeat of the impending "Humphrey Amendment" which would deny tax exempt status to health care institutions providing abortions. As trustees of not-for-profit hospitals across the country, we are alarmed by the use of the 501(c)(3) tax status as the vehicle for the debate of this important social issue.

As a society, we grant tax exemption to voluntary hospitals because they perform a public service that would otherwise fall to government. Their assets belong to the community; their profits accrue to the community; and, their services are determined by community demand in accordance with the laws of the land.

Tax-exempt status is not a handle for social change. As long as it is seen as a short-term expedient that can be wielded like a weapon over the heads of our communities, it is a constant threat to our voluntary health care system. Even abortion, an issue that challenges our deepest values and

morality, should not be allowed to undermine the mission of that system.

Voluntary hospitals are community-owned, and community-run. The span of services they provide is vast and all-encompassing, from meals-on-wheels to heart-lung transplants to hospice. It is the home of private sector clinical research, medical education, care for the poor, technological development, tertiary care and chronic care. It is the training ground for our medical professionals and the underpinning of our nation's medical excellence. In some cases it is the provider of abortions.

Tax status must not become Congress' whipping boy in the battle for social change. Abortion can and should be debated on its own merits. It is not a tax issue; nor should it be cast as a hospital issue. No coherent health care policy objective is achieved by forcing abortion into the for-profit and public sectors alone. If abortion is the social issue then let us address it.

We need to put to rest the perception that 501(c)(3) hospitals are the ever-available vehicles of reform for all of our social problems. Let them remain instead the ever-available providers of community health care services as they were designed by law to be.

Sincerely,

BENJAMIN R. STURGES,
Chairman of the Board.

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES,
August 11, 1986.

Hon. BOB PACKWOOD,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: An amendment sponsored by Senator Humphrey (R-NH) may be offered at any time before the end of this congressinal session to a "must-pass" piece of legislation. The Humphrey amendment would revoke the tax-exempt status of any organization that performs, finances or provides facilities for any abortion not necessary to save the life of a pregnant woman. The amendment would also make contributions to any such organization taxable, whether or not the contributions are used to provide abortion services. The League of Women Voters of the United States is strongly opposed to the Humphrey amendment.

The clear intent of the amendment's sponsor is to circumvent the 1973 Supreme Court decision in *Roe* v. *Wade* in which the Supreme Court interpreted the constitutional right of privacy to include, within specified limits, protection of the individual's freedom to decide whether or not to terminate a pregnancy, a right reaffirmed recently by the Supreme Court. The League of Women Voters believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices.

The Humphrey amendment is another attempt to restrict the range of reproductive choices by those who would circumvent the Supreme Court's decision. In addition, the Humphrey amendment would jeopardize the financial stability of virtually every not-for-profit provider of health and social services in the United States, including most of the nation's hospitals, many Blue Cross/Blue Shield plans and a variety of philanthropic organizations. By denying tax-exempt status to the not-for-profit health care community, the Humphrey amendment would decrease the health care generally available to low-income individuals and increase the cost of health care throughout the country.

This amendment is not bad social policy, but also bad tax policy. The amendment's sponsor seeks to use the federal income tax code to discourage an activity that the Supreme Court has ruled to be constitutionally protected. Also, by limiting access to a legal medical procedure by means of the tax code, Congress is setting itself up as the ultimate medical authority, determining which legal medical procedures will be accessible and which will not.

Finally, by decreasing the number of facilities providing abortion services as well as raising the cost of the procedure, Congress would be creating a new barrier on women seeking abortion services that did not exist before. For this reason, we question whether the amendment could sustain a constitutional challenge.

Again, we strongly oppose the Humphrey amendment and are committed to working with you to defeat this amendment when it comes to the Senate floor.

Sincerely,

NANCY M. NEUMAN,
President.

AMERICAN PSYCHOLOGICAL ASSOCIATION,
July 22, 1986.

Hon. BOB PACKWOOD,
Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing on behalf of the 87,000 members of the American Psychological Association to express our concerns with respect to the amendment which Senator Humphrey intends to offer which would revoke the tax-exempt status of organizations that perform, finance, or provide facilities for abortions not necessary to save the life of a pregnant woman. This amendment represents a clear attempt to circumvent recent Supreme Court decisions and deny many women their constitutionally protected right to terminate a pregnancy.

This issue is of considerable concern to the members of the American Psychological Association. As practitioners and researchers, psychologists understand that unwanted childbearing has severe health, social, and psychological consequences. Health problems include increased risk for illness or death for both mother and child. In addition, unwanted childbearing has been linked with a variety of social problems, including divorce, poverty, child abuse, and juvenile delinquency. Studies have found that unwanted children are less likely to have a secure family life. As adults, they are more likely to engage in criminal behavior, be on public assistance, and receive mental health services.

The adverse consequences of teenagers' inability to control their childbearing are particularly severe. Aside from the well-known health risks associated with being the child of a child, research has established that their social and psychological problems persist, largely due to the lack of education and poor employment prospects of their teenage mothers. Children born to teenagers are more likely to have lower intelligence and achievement test scores and poorer school adjustment. The problems are particularly severe for the more than 80 percent of these children of teens who are unwanted.

Access to abortion continues to play an important role in the prevention of unwanted births. Research has found that when abortion is denied, the resulting children are more likely to have a variety of social and psychological problems, even when they are born to healthy adult women with intact marriages and adequate economic resources. Such children have poorer grades in school, are less liked by other children, and are regarded by teachers and parents as more irritable and anger prone. Their poorer school performance increases with age, becoming highly significant by adolescence.

It is important to recognize that these adverse effects are not shared equally by all segments of our society, but fall more heavily on those who are poor, black, or young, the very groups of persons who receive services from those organizations targeted by the Humphrey amendment. Yet, the evidence suggests that even in advantageous social and economic circumstances, when a pregnancy is unwanted and the woman requests an abortion, to deny it forces her to bear a child at risk for psychological problems that are long lasting. In this context, the watchword of the family planning movement—"Every Child a Wanted Child"—has particular meaning for psychologists.

For these reasons, the American Psychological Association opposes the Humphrey amendment. We greatly appreciate the leadership you have shown over the years on this issue, and urge you and other members of the Senate to defeat this attempt to restrict the availability of a constitutionally protected medical procedure.

Sincerely,

LEONARD D. GOODSTEIN, PH.D.,
Executive Officer.

BLUE CROSS AND
BLUE SHIELD ASSOCIATION,
Washington, DC, July 21, 1986.

Hon. BOB PACKWOOD,
Chairman Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of the Blue Cross and Blue Shield Association and its member Plans, I am writing to oppose efforts such as S.2382 that would deny tax-exempt status to organizations that finance abortions. Should an action of this nature become law, Blue Cross and Blue Shield Plans would likely lose their tax exemption.

The added burden of federal taxes would unavoidably increase premiums for many of our subscribers and force Plans to be more selective in the risks they are willing to accept. Both of these outcomes would seriously reduce access to protection against the costs of health care.

The carte blanche denial of tax exemption to organizations that finance a recognized medical procedure would not in any way address the moral questions surrounding the issue of abortion. It would, however, raise the cost of health care protection and, in many cases, eliminate the only protection currently available to the higher risk segments of our population. This is not sound public policy.

We applaud your efforts to reject changes in the tax code that would have unintended, but very serious, consequences for millions of Americans.

Sincerely,

MARY NELL LEHNHARD.

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,
July 21, 1986.

Hon. BOB PACKWOOD,
Russell Building, Washington, DC.

DEAR SENATOR PACKWOOD: On behalf of The American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 25,000 physicians specializing in the delivery of women's health care, I urge you to oppose the Armstrong-Humphrey amendment. This amendment would deny tax-exempt status to any organization which performs, finances, or provides abortions. It would also eliminate the tax-deductible status of charitable contributions by donors to such organizations. Senators Armstrong and Humphrey have announced their intention to offer this amendment on the Senate floor, but have not identified which legislation will be used as the vehicle.

This language is extremely broad and has far-reaching implications. It would deny tax-exempt status to many philanthropic organizations, teaching hospitals, health maintenance organizations, and most, if not all, nonprofit hospitals which are not run by a governmental agency. For example, United Way would lose its tax-exempt status if any of its funds were given to an organization which provided abortion services, whether or not the funds were actually used for abortions. A tax-exempt hospital would lose such status if any abortions were performed regardless of how many other health care services were provided. It could be argued that an employer whose activities are legitimately tax-exempt would lose such status if its employee health plan covered services.

Not only would this amendment require affected organizations to pay taxes, it would also significantly reduce their ability to raise funds by denying donors the ability to deduct donations to such organizations as charitable contributions. Again, this restriction is not limited to funds contributed for purposes relating to abortions but to all donations to such organizations.

The Supreme Court in *Roe* v. *Wade* stated that up to the point of viability "the abortion decision is inherently, and primarily, a medical decision . . ." and found that the government cannot deny a patient the right to obtain an abortion. If this amendment were successful, the availability of abortion services would be significantly reduced, and the government would effectuate through indirect means exactly what the Supreme Court found it could not do directly.

Finally, we believe it is inappropriate for the federal government to define which medical procedures are of sufficient benefit to society to constitute a charitable act. Never before has the government attempted to do so and it should not begin now.

For these reasons, The American College of Obstetricians and Gynecologists urges you to oppose the Armstrong-Humphrey amendment.

Sincerely,
HAROLD A. KAMINETZKY, M.D., FACOG,
Director of Practice Activities.

RABBI ALEXANDER M. SCHINDLER,
UNION OF AMERICAN HEBREW CONGREGATIONS,
New York, NY, September 23, 1986.

DEAR SENATOR: The Union of American Hebrew Congregations, representing 1.3 million Jews in the United States and Canada, strongly opposes the anti-abortion amendment to the Continuing Resolution which Senator Humphrey is expected to offer this week. The amendment could deny nonprofit tax status to organizations providing abortion-related services.

This amendment could well threaten the financial status of hospitals, social service agencies, philanthropic organizations and individual health care providers. Because its provisions are ill-defined, a broad interpretation of the amendment could jeopardize religious organizations and political advocacy groups. Tax-exempt status could even be denied to individual congregations whose clergy counsel on problem pregnancy options in the privileged context of clergy-congregant communications.

The Jewish community has generally opposed all attempts to restrict a woman's right of reproductive freedom, not because we are pro-abortion but because we strongly believe that this is an improper intrusion of government into the private life of an individual. Jewish tradition does not offer blanket support or prohibition of abortion. There are circumstances in which abortion is not only permitted but mandated. Any legislation in this sensitive area encroaches upon the religious freedom of all Americans to conduct their lives according to the teachings of their faith.

The proposed amendment is another attempt by the legislature to restrict women's constitutional rights and religious freedom which have been upheld by the Supreme Court's affirmation of a woman's right to choose abortion.

We urge you to vote against this amendment and to reject all other amendments that would weaken international or domestic family planning by limiting a woman's right of choice.

Sincerely,
RABBI ALEXANDER SCHINDLER,
President.

Mr. ARMSTRONG. Mr. President, though I have reached an entirely different conclusion, both about this amendment and about the underlying issue of abortion than my friend from Oregon, I really would not want to let the moment pass without complimenting him on his statement and responding briefly to it.

Every Senator knows that the Senator from Oregon is a thoughtful and indeed extraordinarily skillful legislator. There is a time in the debate when skillful legislators sometimes raise strong points. He has erected two which I want to identify.

The first is whether or not there is something about the Humphrey amendment which somehow denies other Senators or other people the right to hold an opinion which is different than that of the Senator from New Hampshire, the Senator from Colorado, or, for that matter, 60 percent of the American public who in polls say they disapprove of abortions.

There is nothing, I would submit, which I have said or others have said which denies to anyone the right to that opinion.

In fact, in my remarks I made it a point to address myself to two groups of people.

First, briefly, those who do not share my own conviction about the sanctity of life. There are people, and I have said this on many occasions and acknowledge it this morning, there are men and women of good conscience who do not believe that the unborn fetus is in fact a living human being.

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I have met many of them who have looked at the evidence who have simply not reached the conclusion that I have. I would have to say to the Senator and to my colleagues that I have yet to meet even one person—there may be one—who was willing to say, yes, I think that is a human being, that it is a child, that it is a baby, who also held a permissive view toward abortion. The dividing line invariably in my experience—there may be some exception to it; perhaps there is an exception within this body—but invariably within my experience, the dividing line is what you think is going on inside the mother's womb. If you think that is tissue, it is something other than a real, live, human being, then it seems to me it is impossible to justify the invasion of privacy, the infringement on the right of choice which is inherent in taking an anti-abortion position. Such an invasion of privacy, such an extraordinary exercise to deny or discourage a surgical procedure is only justified if you first believe that we are talking about a human life or that we are talking about a million and a half human lives a year or we are talking about 15 or 20 million human lives in the last 20 years.

I have looked at the scientific evidence. I am persuaded by scientific evidence and by evidence of the heart that those are human babies we are talking about. But I recognize that others come to a different position. So in my opening remarks, I addressed myself briefly and I hope persuasively to those who do not believe in our position on the sanctity of life.

Then I shifted gears, let me remind the Senator from Oregon, and addressed myself specifically to those Senators who have reached the same conclusion I have. I believe that is a majority in the Chamber, because a majority has on previous occasions supported the Hyde amendment. I may be wrong. There may not be a majority this morning.

But I pointed out that if they believe as I do, that we are talking about human life, then they should vote their conscience on that issue, not denying the right of conscience to everybody else; but they should not be discouraged by the fact that it is inconvenient, that we are all tired, that it may cause a hardship on the organizations mentioned, that it may tie us up for a few days with the Senator from Oregon filibustering on the issue. But if it is a human life, and there may be a majority in this body who believe

that, then these other considerations of convenience and timing and fatigue and whatnot are just less important.

Second, let me conclude as I began, that there are differences of opinion among thoughtful people. If there were something which I said which in any way tended to cast into outer darkness—I think that was the phrase used by the Senator from Oregon—Senators or organizations of the kind he mentioned, it is not my desire. I think it was not my intent. I do not think any person who heard my remarks would interpret them in that way.

This is a major national policy issue. It deserves to be debated in a thoughtful, dispassionate manner. If fact, I am personally convinced that emotional debate on this particular issue does not enhance the dignity of this body, it does not add to the thought life of the country. In fact, when people engage in the kind of tactics which I describe as being strident and hard-edged and which the Senator from Oregon described in much more specific, precise, and honest terms, I think they demean the process. I think they abuse the kind of debate for which our country is justifiably proud.

Mr. President, finally, I want to respond to a substantive issue the Senator raised. He said what about these hospitals and other organizations who might lose their tax-exempt status? Again, it is just a question of what you think the issue is. If you think we are talking about life, babies, then it is important enough to inconvenience them or make them change their ways.

If, for example, those same great institutions which the Senator mentioned were practicing racial discrimination, there is no question they would lose their tax-exempt status. They would. That has been litigated in the court. There is probably not one Member of the Senate or of the House or anybody I can think of who would say, yes, you can go ahead and practice race discrimination and not lose your tax-exempt status.

We do not say you cannot hold that view. In fact, you can even be a charitable foundation and advocate a different point of view, but you cannot practice it and keep your tax-exempt status.

But if you believe, and I think a majority of Senators do and a majority of people in this country do, that abortion is an even more awful act, an even more awful habit of mind than is race discrimination, than you have no trouble in saying that anybody who practices it should either change their ways or lose their tax-exempt status.

I thank the Chair and I thank my friend from Oregon for listening because my desire is not to be personal, it is not for a millisecond to deny anyone else the legitimacy of their views but only to state my own and hopefully to encourage support from others.

Mr. HATFIELD. Mr. President, once again prolife Senators find themselves split and divided by an amendment offered as a rider to an appropriations bill, an amendment which is at best well-intentioned and at worst is the legislative equivalent of a suicide car bombing mission.

I think the prolife movement ought to seriously consider adopting a new strategy to combat the evil of abortion. We should face up to the sobering truth that the current approach—the approach which says "push any amendment, no matter how overbroad or ill-timed, for a vote," is not succeeding. Mr. President, the scorecard for abortion opponents, and I am glad to number myself among them, the scorecard is shameful.

Of the last 24 votes on abortion-related amendments, we have lost two-thirds of those votes. That is a 33-percent success rate, which is a failure rate in every sense.

Now, if these votes involved clear-cut questions, then they would be worthwhile just on the basis of principle. But they never are. And the amendment before the Senate is a perfect example. Here is an amendment which makes no attempt, no attempt whatsoever, to narrow itself to the question as to whether abortion should be lawful and whether any Federal funds should be obligated to pay for such abortions. It's not bad enough that we are swinging wide open the doors to 501(c)(3) charitable deduction status. It's not bad enough that we are bypassing the entire normal legislative process. But then we add insult to this injury to the process and to the very groups we purport to protect, by not even carving a small exception for teaching hospitals. Not even hospitals which teach doctors how to perform an abortion in cases where the life of the mother is endangered, are exempted.

I submit that such an amending strategy reveals a "death wish" quality to the prolife movement. Can anyone believe that such a split within the ranks is helpful? Can anyone argue that such beatings on the floor, as most assuredly we shall see on this amendment, are worthwhile? I believe that we are discrediting the cause against abortion when we bring up such overbroad, poorly timed, ill-fated proposals as the pending measure before the Senate reflects.

Quite honestly, I would not be surprised to see an amendment come before the Senate which denies Federal highways assistance moneys to all States whose roads are used by women driving to have abortions. But as I have indicated, overbreadth is not the only problem here. The pending amendment does not even touch half of the abortion providers in the United States. So one does not have to stretch reason or intellect to far to find good cause to oppose this amendment. When you weigh the benefits of this amendment with the enormous costs, you come up with a "no" vote. What about the hospitals which provide health care to the poor and the mentally handicapped but which also perform one or two abortions per year? Can we not find some way to get at the abortions performed without shutting down the hospitals that provide services to so many in need? Do we have to toy with tax exemption status when such a dangerous experiment could help proponents of this amendment today but hurt them tomorrow?

And so I regret that I must oppose my friend from New Hampshire. This regret is intensified by my disappointment with the death-wish character now fairly ascribed to the prolife movement. According to a 1985 CBS/N.Y. Times poll, the majority of Americans believe that abortion is the same as murdering a child. Unfortunately, the U.S. Senate has not been able to channel this consensus among the public toward eradicating the evil of abortion on demand. This amendment, in my opinion, moves us further from that goal, not closer.

Mrs. KASSEBAUM. Mr. President, I rise in opposition to the amendment. I believe it is important to stress just how broad this amendment is.

The amendment is not merely the reverse side of the coin of the Hyde amendment. The Hyde amendment deal with specific limitations on the use of Federal dollars for abortion. The Hyde amendment does not cut off all Medicaid, Medicare, and other Federal funding to a health care institution if that institution offers abortion services. Rather, it states that those dollars may not be used for abortion unless the life of the mother is endangered.

In contrast, the amendment before us today would eliminate in one fell swoop the entire tax-exempt status of any health care organization that performs, finances, or provides facilities for abortion. Nonprofit hospitals, clinics, insurance companies, health maintenance organizations, and medical schools all fall within the purview of this amendment. The amendment goes even further in stating that anyone who makes a contribution to these organizations may not take it as a charitable deduction.

Clearly, the loss of an organization's tax-exempt status is a severe penalty. One would think such a penalty would be reserved for punishment of egregious violations of the law. But, in fact, this amendment is designed to penalize the health care community for providing a legal medical service.

Enactment of this amendment would place health care professionals and institutions in an untenable position. Moreover, once we start down this path, I'm not sure where we stop. In all likelihood, any nonprofit organization conducts some activity that does not meet the approval of some Member of the Senate.

How many times on the continuing resolution or any other appropriations bill have we heard amendments prefaced with, "None of the funds in this act shall be used to . . . ?" This type of amendment is troublesome in its own way, but it is nothing compared with a threat to pull an organization's entire tax-exempt status. I just don't think we need another weapon in our arsenal of techniques for accomplishing indirectly what cannot be achieved directly though normal legislative channels.

I urge my colleagues to join in opposing this amendment.

Mr. MITCHELL. Mr. President, I will not support the amendment of the Senator from New Hampshire.

I sympathize with the goal. I agree that we ought not provide a governmental subsidy for a purpose that many of our citizens find morally repugnant. I have repeatedly voted against funding abortions except to preserve maternal life, because I believe Government ought not encourage abortion.

But the amendment before us does not deal with a direct subsidy such as is found in the Medicaid Program. It is not, contrary to the claims made, a reverse form of the Hyde amendment, which denies tax dollars for abortion.

It is instead a potentially far-reaching, underexamined change in our tax laws that deserves more careful consideration than it has received.

The amendment would condition the receipt of a general and broad governmental benefit—in this case, a tax exemption—on the curtailment of a constitutionally protected activity.

The claimed intent of the amendment is to prevent an indirect Government subsidy going to the performance of abortions by denying tax-exempt status to organizations which finance or facilitate abortions.

But the language on the face of it raises as many questions as it seeks to answer.

Abortions for therapeutic reasons falling short of life-threatening circumstances are performed by hospitals as well as freestanding clinics.

Foundations devoted to dealing with the tragic problem of birth defects must advise their clients of all legal options open to a couple facing the prospect of a baby born with a condition such as Tay-Sachs, which inevitably causes death within 2 or 3 years.

And because there is absolutely no way to predict whether the amendment's intent is broad or narrow, it would throw into doubt the tax-exempt status of a substantial number of community-based-nonprofit hospitals which operate pre- and post-natal clinics, as well as potentially affecting universities affiliated with teaching hospitals.

The American College of Obstetrics and Gynecology, the American Hospital Association, the Association of American Medical Colleges, the American Protestant Health Association—indeed, a wide range of nonprofit health-related groups—opposes this amendment.

Obviously, if this language were to become law, the tax status of various institutions would be immediately under challenge. And the statute itself would be challenged.

And contrary to the claims made here on the Senate floor, it would not then be the Congress of the United States determining the limits of the tax exemption in law. It would be the courts.

In the courts, the rules of statutory construction, under which tax liability is examined, includes a requirement that constructions which avoid constitutional problems are to be preferred.

The rules of statutory construction also require that when the purpose of a statute is to affect conduct rather than to raise revenues, courts should primarily be concerned to effectuate the regulatory purpose of the statute.

Because the amendment would amend section 501 of the Internal Revenue Code, which defines and delimits tax exemption, it would reach other referenced sections of the Tax Code, such as section 103, for example, which defines the tax exemption of interest on bonds with references to "exempt persons."

Similarly, because on the face of it the language does not specify how the prohibition is triggered, it is unclear if an abortion performed without the consent of a hospital, or for a "life-threatening" purpose which turned out not to have been life-threatening would jeopardize an institution's tax exemption.

According to an analysis by the American Law Division of the Library of Congress, a narrow construction of the language of the amendment could curtail the tax-exempt status of 3,591 nonprofit hospitals nationwide, about 75 percent of all HMO's, the 90 Blue Cross/Blue Shield plans, and potentially many other health insurance plans provided by nonprofit organizations.

If the language is given a somewhat broader interpretation, it would affect the tax-exempt status of bonds used to finance the majority of health care facilities around the country: $31 billion was raised for health facilities by tax-exempt bonds last year. Constant changes in tax law have already thrown this bond market into some disarray. Passage of this amendment could cause further confusion.

Even if State-run hospitals and universities affiliated with hospitals, and broad charities such as United Way or Community Chest were not ultimately found to be within the scope of this amendment, the degree of uncertainty that such institutions would suffer before the issue was finally resolved would be substantial.

The goal of limiting abortion is a goal that all of us share, those who are pro-life and those who are pro-choice. There is nobody in the Senate who affirmatively supports abortion. But in the zeal to deal with each and every possible way in which this controversial issue may impinge on our society, we have to take into account, as well, the other issues that are involved in our society.

And there is no evading the fact that in our system, the grant of a tax exemption to nonprofit institutions which provide health care services and support health care institutions plays a major role in the structure that makes it possible for our people to have access to quality health care throughout the Nation.

Dramatic and apparently straightforward legislation of this kind has an obvious appeal to those who want to curtail abortion.

But we have to take into account as well the structure of our tax exempt system and make certain we are not creating more problems than we think we may be solving.

States enjoy tax exemption in part because of intergovernmental immunity, but this does not reach all State actions. In 1946—New York versus United States—the Supreme Court upheld a Federal sales tax on mineral waters bottled and sold by New York State. The test suggested by that case allowed Congress to tax a "source of revenue by whomsoever earned and not uniquely capable of being earned only by a State" even where the tax "falls also on a State."

Under this test, universities affiliated with hospitals may be reached by the language as well.

And although the proponents claim that there is no constitutional bar to the passage of this proposal, that is an assertion resting on a very fragile basis.

The constitutional issues hinge on the degree to which this language, by curtailing the overall availability of abortion services, would raise a governmental erected barrier to the exercise of a constitutionally protected right.

Harris versus McRae, the 1980 case which upheld denial of Medicaid funding for therapeutic abortions, said:

"Abortion is inherently different from other medical procedures because no other

procedure involves the purposeful termination of potential life."

But in the very same decision, the Harris court also said:

"The guarantee of equal protection * * * is * * * a right to be free from invidious discrimination in statutory classifications and other governmental activity. It is well settled that where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained * * *".

Numerous subsequent rulings have held that abortion is a currently protected right to whose exercise coercive governmental obstacles are not permitted.

The condition of tax exemption for constitutionally protected rights is not as clear cut as either proponents or opponents would like it to be.

A number of cases—Walz versus Tax Commission, Regan versus Taxation with Representation—have found that the denial of a tax exemption does not constitute an unconstitutional burden or condition on the face of it.

But the Court has also invalidated restrictions based on the tax exemption.

Thus, in Regan, it upheld the denial of exempt status to funds used for lobbying, while in FCC versus League of Women Voters, a restriction on editorializing by public radio stations was struck down.

There is no clear-cut case which either supports or refutes the contention that this amendment would be facially unconstitutional.

As recently as this past term, the Supreme Court reaffirmed that Government may not impose burdens on a woman's exercise of her personal decision about abortion. The amendment before us would have potentially far-reaching effects on the availability of abortion.

If by this amendment that availability is curtailed, it would constitute an additional, Government-created, and arguably burdensome condition, such as the Court has repeatedly struck down in a string of cases.

The argument that individuals who morally oppose abortion ought not be required to subsidize by a grant of tax exemption those organizations which perform abortion would, of course, totally undermine the basis on which tax-exempt status is granted in our Nation.

Nobody is required to contribute to organizations which perform abortion. Congress has already insulated the tax dollars of everyone—those who oppose abortion as well as the tax dollars of those who do not—from a use to which the former objects.

But if we are going to condition tax-exempt status on the basis of the fact that some of our taxpayers oppose some of the goals of some organizations which enjoy that status, then the overwhelming majority of tax-exempt organizations would find their status at risk.

We grant tax-exempt status to a broad range of groups. Over 100,000 groups applied for it last year. They run the gamut from organizations which support arms control to those which support the buildup of American military power. Indeed, legislation has been proposed for several years in an effort to allow individuals who are morally opposed to war to dedicate their tax dollars to other purposes.

In a diverse nation, we cannot and have never sought to condition a broad status—such as tax exemption—on a controversial issue of this nature.

No reliable information exists as to how many hospitals would be potentially affected. Virtually nothing is known at all of their likely response.

It is unclear if hospitals affiliated with religious denominations would be affected. Congress has explicitly provided that the tax-exempt status and Government-derived financing of religiously affiliated institutions would not be conditioned on their refusal to perform abortions.

But all religious denominations do not view abortion in the same way, and some religiously affiliated hospitals provide abortions, if not on demand, then on therapeutic grounds that fall short of being life-threatening.

Would this amendment have the effect of retroactively creating a prohibited form of "preference" for some religious beliefs over others? This should be reviewed.

We have no idea of the practical impact on secular hospitals. Would community hospitals choose to eliminate abortion procedures? Would they establish separate entities to perform abortions? And if so, how could they assure the degree of separability from their nonprofit gynecological services which the IRS could demand?

We are being asked to make a judgment of potentially far-reaching magnitude without the benefit of any reliable information whatsoever.

As a practical matter, the liability insurance crisis has already forced some hospitals to curtail the services they are willing to provide. I am informed that 10 Maine hospitals no longer provide delivery services at all, so women living in the areas served by those hospitals face potentially serious problems in access to basic health care.

If the passage of this amendment compounds this kind of problem by persuading hospitals that it is safest and easiest to simply not provide a range of related services, such as gynecological services, that possibility should be reviewed before Congress acts rather than discovered after the fact.

The Finance Committee held several months of hearings on the entire range of issues related to tax reform. Yet no testimony was offered on the subject of this amendment. No request was made to testify by any of its proponents. No amendment was offered in committee. And since its introduction as a Senate bill in late April, the only data available has been speculative and unreliable.

Congress ought never legislate without the benefit of adequate information. But that is particularly true when we are asked to deal with matters of such potentially far-reaching effect.

The grant of tax exemption which Congress has extended to this extremely broad and diverse community of nonprofit organizations and institutions rests as much on the principle of encouraging diversity as it does on traditional common-law principles of charitable service.

The blanket denial of that status for one highly controversial matter, the provision of abortion services, constitutes a radical departure from the extension of tax-exempt status that has hitherto guided Congress.

It is a policy departure that deserves more careful examination, both on factual and policy grounds, than we are able to give it in the process of this brief debate. For that reason, I will oppose the amendment.

Mr. KERRY. Mr. President, I rise today to join my colleagues in expressing my opposition to the amendment proposed by Senator HUMPHREY.

First, this amendment has far-reaching implications that have not been adequately studied, and the action today represents legislating on an appropriations bill. The Senator from New Hampshire's legislation was introduced barely 6 months ago, no hearings have been requested, and to the best of my knowledge this is the first time that this issue has been raised in a tax context. Despite the many tax reform hearings on both the House and Senate side during this Congress, no attempt was ever made to raise this issue.

Now, sponsors of this amendment have made it clear that their intent is to deny tax-exempt status to reproductive health care clinics, but the amendment would in fact have significant impact far more than that—on nonprofit hospitals, universities, community health centers, health maintenance organizations, and philanthropic foundations. It is even likely that many protestant and Jewish faith groups and agencies could lose their tax-exempt status because of their support for abortion rights and services that often include clergy counseling on abortion.

The types of organizations we know will be at risk are:

The Nation's 3,591 nongovernmental, not-for-profit hospitals;

Nearly three-fourths of all health maintenance organizations [HMO's];

Thirty-one percent of the Nation's abortion clinics;

Many of the 90 Blue Cross and Blue Shield plans;

State-run medical colleges and universities; and

Any voluntary employees' beneficiary societies [VEBA] or labor orgnizations that provide sickness benefits, and so forth.

In addition, Mr. President, the tax-exempt bond market would also fall victim to the amendment's broad impact. Tax-exempt financing through municipal bonds is the primary source of funding for nonprofit health care providers. Insurers and investors would be left in a quandary with regard to the future status of these bonds while the many questions and uncertainties surrounding the Humphrey amendment remain unanswered in the traditional congressional deliberative process. For example, in the first quarter of 1986 the tax-exempt financings for health care organizations plummeted, dropping to the lowest quarterly number since 1974.

The financial community attributes this substantial decline in health care financings to tax reform proposals and the uncertainty in the bond market for tax-exempt health care institutions. The position of the bond market is clear on the Humphrey amendment, as indicated by a recent Bear, Stearns & Co., statement on the issue: "The proposed amendment to section 501 of the Internal Revenue Code would severely impact the ability of all health care issuers, including those which do not perform abortions, to raise funds in the public tax-exempt markets."

Mr. President, this amendment also raises serious questions about its constitutionality. It penalizes an organization for providing a service which is protected by the Constitution, in spite of the fact that the Supreme Court has ruled that the right to abortion is protected by the Constitution—*Roe* v. *Wade*. The Humphrey amendment would force nonprofit hospitals and other organizations to choose between economic solvency and providing a legal medical service. In some situations, the amendment would force hospitals in States such as New Jersey, which are under court order to provide abortion services, to lose their tax-exempt status.

The Supreme Court has been very clear on the issues this amendment would attempt to raise. In *Speiser* v. *Randall and FCC* ve. *League of Women Voters*, the Court held that the Government may not penalize, either through denials of tax benefits or denials of direct assistance, the exercise of a constitutional right.

I think this amendment would wreak havoc on our Nation's health care system by severely restricting nonprofit hospitals and clinics from providing health care services that are necessary and vital. These facilities play pivotal roles in the provision of care to our Nation's elderly, poor, and handicapped. The Supreme Court in *Roe* v. *Wade* stated that up to the point of viability "the abortion decision is inherently, and primarily, a medical decision * * *" and found that the Government cannot deny a patient the right to obtain an abortion. And yet, Mr. President, if this amendment were successful, it would do exactly that. According to the American Medical Association, "This amendment is guaranteed to achieve only one thing—the disruption of health care in the Nation." The American Hospital Association believes the amendment would restrict public hospitals from "the basic responsibility for ensuring public health."

Mr. President, the issues of abortion, access to health care, and the continuing appropriations each deserve to be considered separately and on their own merits. This is neither the time nor the place for the careful deliberation these questions and issues should receive, and I repeat my earlier assertion that the amendment offered today represents legislating on an appropriations bill. I intend to vote against this amendment and I urge my colleagues to do so as well.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, we have had three statements now, two in support of this measure and one opposed. It is the position of the committee that this amendment is not germane. This bill deals with the appropriation of funds after they have already come to the Treasury. The proposed amendment deals with tax policy with regard to the payment of taxes. It is not germane to this bill that is before us. On behalf of the committee, I raise the point of order under rule XVI that the amendment is not germane.

The PRESIDING OFFICER. Under rule XVI——

Mr. EXON. Mr. President, a point of order.

Mr. HUMPHREY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second for the yeas and nays? There is sufficient second.

The yeas and nays were ordered.

Mr. EXON. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. EXON. The Senator from Nebraska has been on the floor early and I waited patiently. Would my colleagues be good enough and kind enough, certainly the majority leader knows, that I might continue for 1 minute notwithstanding the point of order made by the Senator from Alaska.

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. Reserving the right to object, Mr. President, and I do not really wish to object, but I did not want to be put in a bind. If the Senator from Nebraska——

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. EXON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk resumed the call of the roll.

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

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

Mr. STEVENS. Mr. President, I withdraw my point of order for the time being in order that I may have a dialog with my friend from Nebraska for just a moment.

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

Mr. STEVENS. I would like to maintain the floor at the same time.

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

Mr. STEVENS. Mr. President, if the Senator from Nebraska and the Senator from New Hampshire would give this Senator some idea of what they consider a reasonable time, we do still have some 17 amendments to deal with. I have been asked by the chairman of the committee to raise this point of order. Would the Senator from Nebraska like a couple of minutes?

Mr. EXON. That is more than adequate.

Mr. STEVENS. And the Senator from New Hampshire?

Mr. HUMPHREY. Equal time. I may not use it all.

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

Mr. STEVENS. I yield to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, I would be prepared to forgo a statement but I do have a lengthy statement I would like to make at some point, depending on how the question of germaneness comes out. I shall make the statement if the amendment is determined to be germane.

□ 1100

Mr. STEVENS. Mr. President, I assure the Senator from New Jersey that there are several Senators with

long statements, and I am sure, as the Senator from Colorado says, the issue will be before the Senate at the proper time at a later date, not necessarily this year but sometime and I look forward to the Senator's comments.

I ask unanimous consent that the Senator from Nebraska have 2 minutes and the Senator from New Hampshire have 2 minutes and then the Senator from Alaska as the manager of the bill temporarily be rerecognized.

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

The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair and I thank my friend and colleague from Alaska. I also thank my colleague from New Hampshire for offering this amendment. He and I have stood together, along with Senator ARMSTRONG and others, in support of the position in this amendment. Those two Senators also know that I have frequently stood on the floor of the Senate and said that I support the concept but I believe that promptly reportable rape or incest should be included. That is my fundamental belief, it always has been, and as far as I know it always will be. Therefore, I will support the amendment that is being offered with regard to the germaneness question that has been raised. But I would advise the Senate that if the germaneness question prevails in favor of the Senator from New Hampshire, then this Senator will seek recognition to offer an amendment that would add rape and incest exclusions to the amendment that I otherwise agree with. I thank all for their consideration. I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, this has been a civil, respectable debate with no hard feelings, no sign of extreme position or feeling. I think it has been constructive. If we do not succeed today, we will be back. It is an important principle. The question which each Senator must now decide, indirectly, because we have the question of germaneness, is do we want to subsidize the performance and the financing of abortion? We have said no, we do not want to subsidize it with cash outlays. That is why we have repeatedly adopted the Hyde amendment language to bills over the years. Now the question is, Do we want to eliminate tax subsidies? I suggest to you that it is perfectly consistent for Senators—and they are the majority—who supported Hyde should also support this amendment that would eliminate the tax subsidies for abortion.

Let me just say as a practical matter, Mr. President, what would happen if this became law is that abortion clinics and other institutions would incorporate their abortion services separately so that all of their other services, which in many comprise the bulk of their services, such as services offered by universities for example. They would incorporate their abortion services separately and everything else would retain its tax exemption and tax deductible status for contributions. That would be the practical effect. So it is not as draconian as some would have you believe. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the two Senators for their contribution and on behalf of the committee I once again raise a point of order that under rule XVI the amendment of the Senator from New Hampshire is not germane.

The PRESIDING OFFICER. Under rule XVI, the question of germaneness is submitted to the Senate without debate. Is there a request for the yeas and nays?

Mr. STEVENS. 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 clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alabama [Mr. DENTON], and the Senator from Utah [Mr. GARN] are necessarily absent.

The PRESIDING OFFICER (Mr. MCCONNELL). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 34, nays 64, as follows:

[Rollcall Vote No. 323 Leg.]

YEAS—34

Abdnor	Grassley	Melcher
Andrews	Hatch	Murkowski
Armstrong	Hawkins	Nickles
Boschwitz	Hecht	Pressler
D'Amato	Helms	Proxmire
Danforth	Humphrey	Symms
DeConcini	Johnston	Thurmond
Dole	Kasten	Trible
Durenberger	Laxalt	Wallop
Exon	Mattingly	Zorinsky
Ford	McClure	
Gramm	McConnell	

NAYS—64

Baucus	Gore	Nunn
Bentsen	Gorton	Packwood
Biden	Harkin	Pell
Bingaman	Hart	Pryor
Boren	Hatfield	Quayle
Bradley	Heflin	Riegle
Broyhill	Heinz	Rockefeller
Bumpers	Hollings	Roth
Burdick	Inouye	Rudman
Byrd	Kassebaum	Sarbanes
Chafee	Kennedy	Sasser
Chiles	Kerry	Simon
Cochran	Lautenberg	Simpson
Cohen	Leahy	Specter
Cranston	Levin	Stafford
Dixon	Long	Stennis
Dodd	Lugar	Stevens
Domenici	Mathias	Warner
Eagleton	Matsunaga	Weicker
Evans	Metzenbaum	Wilson
Glenn	Mitchell	
Goldwater	Moynihan	

NOT VOTING—2

Denton Garn

□ 1130

The PRESIDING OFFICER. The amendment is not germane.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was declared not germane.

Mr. HATFIELD. 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 Oregon.

□ 1130

Mr. HATFIELD. Mr. President, we have a list here that has been agreed upon and there are about three of them that we are working on that could possibly be resolved and not have to be brought to a vote.

Mr. President, I am wondering if we could accommodate everyone by having this printed list that everyone has a copy of and getting an agreement that we will go in sequence of this list. In that way, everybody knows precisely when their amendment would be up and ready to consider.

I think it would also help expedite and to keep the business moving on the floor. If an amendment were to be in the process of being resolved, we could accept that situation by unanimous consent or lay the amendment aside to take up another amendment.

I will not propound that request at this moment, but I would like to suggest that the leaders be informed on both sides of the aisle that if we could propound at some point later such a unanimous-consent request to take these amendments up in sequence, I believe it would aid a great deal in disposing of these amendments.

Mr. President, we are now in a position to take an amendment that is on this list. We have amendments by Senator HELMS; Senator KENNEDY; Senator BENTSEN; Senator HATCH; Senator THURMOND; Senator PRESSLER; Senator EVANS; Senator BUMPERS; Senators WARNER and TRIBLE; Senator KASSEBAUM; an amendment by me; Senator FORD; Senator KENNEDY; Senator KASTEN; Senator MELCHER; Senator METZENBAUM; Senator KENNEDY; and Senator HELMS.

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. WARNER. 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. 3185

Mr. WARNER. Mr. President, I have spoken with the managers of the bill and at this time it is appropriate for

Mr. TRIBLE and myself to 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 Virginia [Mr. WARNER], for himself and Mr. TRIBLE, proposes an amendment numbered 3185.

Mr. WARNER. 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 text of the amendment appears later in today's RECORD under "Amendments Submitted."

Mr. WARNER. Mr. President, this is a piece of legislation that is a bill that has already been addressed by the House. The principal sponsor, Mr. TRIBLE, and I have discussed it a number of times here on the floor and the Senate has adopted the basic framework of the legislation that is proposed in this amendment.

In offering this amendment, it effectuates a long-term lease of Washington National and Dulles Airports from the Federal Government to a regional authority. The amendment, as other amendments have done, embodies legislation previously passed by the Senate. Mr. TRIBLE and I offer it to give the House of Representatives a second opportunity to view this proposed legislation.

We have every reason to believe that the House is prepared to accept it in the present form for this bill incorporates modifications that are of great importance to the House.

Mr. President, at this time I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, the proposal now before us has the Senate once again considering legislation to transfer ownership of two of the three major airports serving this region—National and Dulles—from the Federal Government to an authority dominated by the State of Virginia.

In previous debate on this floor, I have outlined in careful detail my reasons for opposing this legislation and I continue to have most of those concerns. The version of the airport transfer bill now offered by the Senators from Virginia—and I want to be very candid with my colleagues—is now supported by the State of Maryland. In my own view, I cannot share this judgment about the amendment before us, a bill developed in the House, since I believe that it will have an adverse impact over time, particularly looking ahead and anticipating what is to come, an adverse impact on both residents of the area and on the region's third major airport, Baltimore-Washington International Airport.

□ 1140

What the proposal before us does, the amendment, is structure an unfair and inequitable competitive situation between the new authority which will have both National and Dulles under its aegis, with the ability to cross-subsidize between the two airports. It will structure an unfair competitive situation between that authority, those two airports, and Baltimore-Washington International.

By continuing to focus on National and Dulles as a single unit this bill establishes an unfair competitive situation for BWI which over time may well jeopardize BWI's ability to provide high level service to the entire region.

This legislation fails to recognize in any significant way that all three airports serve the National Capital area, and that a fair competitive airport policy will result in better air service.

We are not objecting to a competitive situation amongst these airports. In fact, we think that will contribute to a higher level of service. But what I am objecting to is structuring an inequitable and unfair competitive situation.

This proposal will create a potent combine of National and Dulles, and I do not believe this has been offset in such a way that BWI will be able to compete in a fair and equitable fashion.

Finally, by granting to the airport authority the power to alter the existing nighttime noise standards, the proposal clearly raises the prospect of increased nighttime use and noise at National Airport.

I am very much opposed to this aspect of the legislation. It may have a devastating effect on communities beneath the flight paths along the Potomac River.

For these reasons, and for others which I have enunciated on previous consideration of this legislation, I will oppose the passage of the amendment that is now before us.

Mr. TRIBLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. TRIBLE. In April, Mr. President, after 9 days of debate, the Senate decisively approved legislation to transfer Washington National and Dulles Airports to a regional authority so that these important facilities could be modernized and enhanced.

Similar legislation was subsequently approved by the House Aviation Subcommittee. However, that bill has not advanced further largely because of the controversy about two extraneous issues—the perimeter rule and the buying and selling of slots.

This amendment is an attempt to give the House of Representatives a second chance to say yes. The amendment embodies the best provisions of the airports transfer legislation passed by the Senate and the House Aviation Subcommittee and has been stripped of extraneous and controversial matters.

This is not the time for further debate of the merits. That has been more than adequately done. Simply let me point out that on two occasions a majority of Senators present and voting have supported this legislation and it is my hope that my colleagues will again say yes.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I rise to make a point of order.

Mr. HOLLINGS addressed the Chair.

Mr. HATFIELD. I withhold that.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I sympathize with the distinguished chairman of our Appropriations Committee. He has fought like a tiger. I agree with his procedure. It is the only way.

It is only in that spirit that I get up here and perhaps in a sense—I do not want to sound arrogant about a vote, but let me explain the reason why at this time I will let this matter be brought to a vote.

No. 1, Mr. President, the reference about a regional authority is totally off base. These are national facilities. The name of one of them is Dulles International Airport. They were built by taxpayers' money from the State of Virginia, and State of South Carolina, the State of California, and down the line.

And necessarily speaking, I never could agree with the Secretary of Transportation on her interpretation of the law, that it was improper to use moneys from the airport and airways trust fund for improvements for airport facilities. Right to that particular point, in trying to abbreviate as much as I possibly can my remarks and my opposition, the distinguished Secretary of Transportation categorically says that it would be on the one hand illegal, on the other hand improper. Well, in this Senator's view of it, it would be very, very proper from the airport and airway trust fund, and very, very legal. Her interpretation comes from the idea that there would be a conflict of interest if the Department of Transportation, as the trustee of the particular funds, were to use these moneys for National and Dulles Airports. She says that somehow that would be a conflict of interest.

On the contrary, that is in the public interest and would fulfill the trust. This particular Department of Transportation represents all the

people of the United States, and these facilities belong to all the people of the United States. They are not regional.

On that particular score, I have had quite a frustration. I experienced it earlier with the texitle trade bill. Everyone is vitally, vitally interested in international trade and how we, as a Congress, set a standard of living on the one hand with respect to clean air, clean water, minimum wage, Social Security, unemployment compensation, safe working place, and, on the other hand, not giving protection to the productive capacity of the United States.

I had a bill, and it is still in the Finance Committee, because this majority crowd in the U.S. Senate knows how to operate the majority. You cannot even get the bill out of the subcommittee, much less the full committee. You cannot get a fair hearing unless you force it to a fair hearing, which I had to do with respect to textiles, and the reconciliation bill.

In a similar fashion I have had to force, what has been termed in the news as a filibuster, to be heard on this particular score. I did this because I had an alternative. I introduced S. 1110 asking for the use of the funds from the Airport and Airways Trust Fund in order to move forward with the development and the improvements of National and Dulles Airports in Washington.

We all agree that there has been excellent management and administration of the airports. There is no inefficiency or incompetence. It has just been a lack of money. The Secretary of Transportation and I both agree that what we really need is money, and how to get the money is the question. And her position is to try to take national facilities, turn them into Virginia facilities, and in turn, let them issue the bonds with their incomes.

I for 4 years signed bond issues as Governor of South Carolina. I am fully aware of the handling costs, attorney's fees and everything else. I am fully aware of the tax expenditure nature of the expending of public funds with respect to the issuance of bonds. And to bring that to a head, Mr. President, I then communicated with the Congressional Budget Office in order to determine what it would cost the taxpayers in order to obtain $250 million for the improvements. CBO told me that would cost $712 million to get that $250 million in construction.

Now the Secretary says we now need $680 million. In order to get that $680 million, we can state categorically based on the CBO estimate, that this will cost the taxpayers and air travels some $2 billion, perhaps much more.

So I thought that this body ought to stop, look, and listen and find out where deficits really start. They start right here in this Chamber by taking the political cop-out, putting up the facade that it is illegal or improper, and then not even given a hearing if you please, a fair hearing, to the matter of the use of the particular funds.

The majority on the Commerce, Science, and Transportation Committee, of which this Member is the ranking member, knows full well you cannot get that kind of hearing. They just fit it in, vote you down.

We all have respect for the majority leader—make that tremendous political respect for the majority leader. He has to go home at night, if we don't stay here all night, and stay with the Secretary of Transportation. They are more interested in getting along with the majority leader than they are in transportation costs of Government.

So I have been facing this block, where I cannot get a fair hearing. I have had to use this particular method of talking in time of a crunch on a continuing resolution to bring these things out to the membership.

□ 1150

I did fairly briefly the other evening, and now once again I express that opposition. Why do I not then offer a bunch of amendments?

Quite to that particular point, it goes to a news article I read that HOLLINGS does not like to lose. The question is, What is winning? What winning is, quite frankly, is to get these facilities improved.

The Secretary of Transportation wants to do that. I want to do it. The Senator from Maryland wants to do it. Everybody wants to do it in the National Congress. Yes, we can be like Sampson and just pull down the temple walls and just let the improvements go for another year or 2 years.

Otherwise, if we want to get something done, I think the best thing to do is to step aside and work with those on the House side and see about getting the use of funds from the trust fund. I have discussed that with them and we will bring it up in conference.

If we see we can bring a lawsuit under the equal protection clause—is it not wonderful history that I am going to use the 14th amendment, the equal protection clause to free up this money? Everybody says that the trust fund money can be used for airports except for the Washington airports?

I know under the equal protection clause, if I cannot get it set aside, I can go into the court and come back next year. I want a fair hearing from Gramm-Rudman-Hollings. I have a list I carry around in my pocket, which includes everything from the fairness doctrine, to the Conrail bill, and it goes right down. Somehow I have been interposed in all of these particular issues.

There is one thing that we seem to try to skirt that keeps us here, and that is to now pay the bills. This U.S. Senate has come up with this, and we have responded to Gramm-Rudman-Hollings. We will have it on the permanent debt limit, and on the temporary debt limit. You run out of so much credit in the bank. I am running out of credit in the bank with my colleagues. We are all getting a little impatient with each other and the long debates on issues we have heard. I hope I am speaking of issues we have not heard.

I know on the particular matter of Gramm-Rudman-Hollings that what we want to do is to really be heard on that one, to continue to maintain the discipline and try to get a fair vote on the House side.

We can bring up the amendment concerning the use of the land at Dulles, but they have changed the target around here. All of a sudden now they say they must buy more land. I hope the Board of Review will watch that closely.

We started off this debate with some 2,000 acres at Dulles available for commercial development. Now we are running out just for the use of the airport, itself, and want to buy more.

So we have a lot of things to concern ourselves about.

The bottom line is that in order to obtain a fair hearing on my principal concern, I must step aside in that light with respect to this particular issue and otherwise try to move forward. We will all be gone out of this national Congress before we get to use the airport. The money is there, the need is there, and everything else is there. Maybe they will momentarily start on some bonds, but I hope before they start to issue too many bonds I can pour the money to them from the airways and airport trust fund which has presently $8.5 billion in it.

Mr. President, I ask unanimous consent that this particular Treasury Department document on the balance of the airport and airway trust fund as of July 31, 1986, be printed in the RECORD at this point.

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

AIRPORT AND AIRWAY TRUST FUND

[Status as of July 31, 1986]

	Current month	Fiscal year to date
I. Balance—Beginning of period	$8,443,248,163.79	$7,425,506,743.43
II. Receipts:		
A. Excise taxes (Transferred from General Fund):		
Any liquid fuel except gas	5,900,000.00	56,712,000.00
Tires used on aircraft	0.00	0.00
Tubes used on aircraft	0.00	0.00
Gasoline		
1. Commercial 9 cents tax	232,000.00	2,257,000.00
2. Noncommercial 9 cents tax	1,937,000.00	30,035,000.00
3. Noncommercial 3 cents tax	616,000.00	9,748,000.00
4. Transp by air, seats, berths, etc.	231,788,000.00	2,001,019,000.00
Use of international trav fac	8,146,000.00	72,462,000.00
Transp of property and cargo	12,832,000.00	112,592,000.00

AIRPORT AND AIRWAY TRUST FUND—Continued

[Status as of July 31, 1986]

	Current month	Fiscal year to date
Total tax receipts	261,451,000.00	2,284,825,000.00
B. Less Reimbursement to General Fund Refund of Taxes and Estimated Tax Credits:		
1. Civil aircraft	0.00	−1,014.00
2. Any liquid fuel except gas	0.00	−6,846,996.00
3. Gasoline—Retailer's tax	0.00	−582,790.00
4. Gasoline—Manufac. tax	0.00	−44,987.00
Total reimburse for tax refunds	0.00	−7,475,787.00
Net tax receipts	261,451,000.00	2,277,349,213.00
C. Interest on Investments	532,585.23	828,282,319.37
Net receipts	261,983,585.23	3,105,631,532.37
III. Expenditures:		
A Federal Aviation Administration:		
1. Operations	−10.00	428,346,635.34
2. Grants-in-aid for airports	77,888, 848.77	703,478,797.93
3. Facilities and equipment	64,135,778.46	604,910,594.080
4. Research engineering and development	33,726,581.13	243,922,412.79
B. NOAA weather services	0.00	20,998,350.00
C. Interest on refund of taxes	0.00	935.00
Total expenditures	175,751,198.36	2,001,657,725.14
IV. Balance—end of period	8,529,480,550.66	8,529,480,550.66

STATEMENT OF FINANCIAL CONDITION

	Assets
Undisbursed balances:	
Airport and airway trust fund	$191.49
Operations	−4,635.34
Grants-in-aid for airports	3,670,329.83
Facilities and equipment	−59,591,309.72
Research engineering and development	88,120,325.40
NOAA weather services	0.00
Total	32,204,900.66
Investments:	
U.S. Treasury certificates of indebtedness:	
9½ percent maturing June 30, 1987	73,543,000.00
9¾ percent maturing June 30, 1987	8,423,731,000.00
Total	8,497,274,000.00
Total assets	8,529,478,900.66
Liabilities:	
Equity: Excess of assets over liabilities	8,529,478,900.66
Total liabilities and equity	8,529,478,900.66

Mr. HOLLINGS. Mr. President, we have been putting out billions and billions for all of everyone's airports. We take and spend some $2.5 billion annually but bring in $3.1 billion from the users. I strongly resist and reject the idea that the users of National and the users of Dulles somehow illegally and improperly cannot benefit from the airport and airways trust fund.

I am opposed to the bill. I am not going to go into a seriatim of amendments at this time, but I definitely hope that my colleagues will hold up, if they see fit, so that in the early part of next year, we can begin to move one way or the other toward using the airport and airways trust fund to go ahead and expedite the improvements in both facilities.

I yield the floor.

Mr. WARNER. Mr. President, momentarily we will be joined by the distinguished senior Senator from Maryland, Senator MATHIAS.

In the interim, I would like to express my appreciation to the managers of the bill and to our colleagues from Maryland, Senator SARBANES and Senator MATHIAS, and our colleague from South Carolina, Senator HOLLINGS. While they have spoken in opposition, indeed they have done so in a straightforward manner. We have covered it well from both sides on this particular issue.

I started out as a member of the Holt Commission and I have followed it ever since. Mr. TRIBLE, my distinguished colleague, was a member of the Commerce Committee and shepherded through that committee the basic legislation that we are now presenting to the Senate.

Let me express my appreciation to him. It has been a pleasure to work with him as a partner on this matter.

Mr. President, we know of no desire to have a record vote.

I see our distinguished colleague from Maryland [Mr. MATHIAS] has arrived in the Chamber. I yield the floor at this time.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I will not detain the Senate long.

Mr. President, I rise in opposition to the amendment offered by my colleagues from Virginia to transfer National and Dulles International Airports to a regional authority. The measure before us today, for all intents and purposes, is the same flawed bill that I voted against earlier this year. This proposal clearly does not serve the public interest. The public in question—and I think it is very important that we define them when speaking of them—is the local, national, and international constituency of the three airports serving the Washington metropolitan area.

We still have not eliminated the basic flaw in the bill—that is, the isolation of one of the three airport serving the Washington metropolitan area, Baltimore-Washington International Airport.

The bill does not provide a balanced approach to all three airports serving the Washington metropolitan area. Instead of promoting harmony among the three airports, as it should, the bill threatens to promote a disquieting discord.

By serving to codify the isolation of BWI, the bill still gives Dulles a competitive advantage over BWI. National would be used as a "cash cow" to underwrite the user fee structure at Dulles. Our hopes of addressing that problem unfortunately were dashed when the Senate rejected my amendment to prevent cross-subsidization between the two airports when S. 1017 was considered earlier this year.

The Board, composed of representatives of Maryland, Virginia, the District of Columbia, and the Federal Government, will have difficulty functioning with BWI isolated from the scheduling of flights and other operational decisions at National and Dulles. Voting blocs are almost certain to develop in ways that will reduce effectiveness.

Beyond the equity problem, the bill is defective from the standpoint of the local community. It unravels the carefully crafted Washington metropolitan area national airports policy by eliminating the passenger cap and freezing the number of airline slots, and leaving open the possibility that the nighttime noise restriction may fall by the wayside.

I would be remiss if I did not recognize one concern of mine that has been addressed in this version of the airports bill. There has been an increase in the lease payments for the two airports, but unfortunately the difference in real dollars from the price established in S. 1017 is microscopic. Instead of requiring the regional authority to pay the Federal Government $44 million over a 35-year lease at 4.9 percent interest—which works out to $2.7 million annually—under this amendment, the authority is required to pay $150 million over a 50-year period with no interest—which translates into $3 million annually. So, in reality what you have is an increase in the price of $300,000 annually for highly valuable property.

The public needs a safe and convenient air travel system. Flight schedules at the three airports should be complementary. Competition should exist between air carriers, not between airports. The large demand today will grow steadily as we near the year 2000, and must be anticipated. We need to plan for the coordinated operation we need. This proposal falls short of accomplishing that goal. I urge my colleagues to vote against the amendment proposed by my colleagues from Virginia.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I make the point of order that the amendment is not germane.

The PRESIDING OFFICER. The question is, Is the amendment germane.

All in favor, say aye; opposed, say no.

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

The PRESIDING OFFICER. The Senator from Maryland asks for the yeas and nays. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. 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] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

The PRESIDING OFFICER (Mr. DENTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 35—as follows:

[Rollcall Vote No. 324 Leg.]

YEAS—63

Abdnor	Gore	Moynihan
Andrews	Gorton	Murkowski
Armstrong	Gramm	Nickles
Bentsen	Grassley	Nunn
Biden	Hatch	Packwood
Boren	Hawkins	Pell
Boschwitz	Hecht	Pressler
Broyhill	Heflin	Pryor
Chafee	Heinz	Quayle
Cochran	Helms	Rockefeller
Cohen	Inouye	Roth
D'Amato	Johnston	Rudman
Danforth	Kassebaum	Sasser
Denton	Kasten	Simpson
Dixon	Kerry	Specter
Dodd	Lautenberg	Symms
Dole	Laxalt	Thurmond
Domenici	Lugar	Trible
Durenberger	Matsunaga	Wallop
Evans	McConnell	Warner
Exon	Metzenbaum	Wilson

NAYS—35

Baucus	Harkin	Melcher
Bingaman	Hart	Mitchell
Bradley	Hatfield	Proxmire
Bumpers	Hollings	Riegle
Burdick	Humphrey	Sarbanes
Byrd	Kennedy	Simon
Chiles	Leahy	Stafford
Cranston	Levin	Stennis
DeConcini	Long	Stevens
Eagleton	Mathias	Weicker
Ford	Mattingly	Zorinsky
Glenn	McClure	

NOT VOTING—2

Garn	Goldwater

The PRESIDING OFFICER. The amendment is germane.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was declared germane.

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

The motion to lay on the table was agreed to.

□ 1220

Mr. TRIBLE. Mr. President, I just want to say a word of thanks to my colleagues. I want to thank the Senate for its patience and its thoughtful consideration of this matter for many, many days.

I want to acknowledge the leadership of the chairman of the Appropriations Committee and my colleagues on both sides of the aisle, on the Commerce Committee and my distinguished friend, colleague, and partner from Virginia, Senator WARNER.

I also want to acknowledge the role played by the Senators from Maryland and the Senators from South Carolina in permitting us to have this final and, we hope, decisive vote. I promise my colleagues that this is the last time this issue will be raised in the 99th Congress in the Senate and trust that the amendment can now be adopted by voice vote.

Mr. WARNER. Mr. President, I join in the remarks of my distinguished colleague from Virginia, with whom I have had the pleasure of working for many months on this issue, and I express appreciation to all in the Senate for their support.

Mr. President, the Chair having acted on the question of germaneness, I move the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3185) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator from Oregon is correct. He is entitled to be heard. His voice has been weakened because of activity on the floor. We should afford him special consideration. The Senator from Oregon is having difficulty being heard.

The staff in back is still conversing, in spite of the request.

The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield to the Senator from Mississippi.

AMENDMENT NO. 3186

Mr. STENNIS. Mr. President, several amendments were received before the deadline last night which have not been cleared. I should like to proceed to four additional amendments that now are cleared on both sides.

I send to the desk an amendment on behalf of the Senators from California [Mr. CRANSTON and Mr. WILSON], on refugee assistance.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. WILSON and Mr. CRANSTON, proposes an amendment numbered 3186.

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

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

The amendment is as follows:

On page 8 line 12 strike the following, "except that no activity authorized by such Acts shall be funded beyond September 30, 1987."

Mr. WILSON. Mr. President, one of the most important components of refugee assistance is the delayed funding technique which allows appropriated funds to be obligated and carried forward into the following fiscal year. Because in the past there has been disagreement with continued funding of these important programs—targeted assistance, education assistance for children, and social services—State and local authorities developed the technique of obligating funds before the end of the fiscal year. Currently, these obligated funds can be carried over into the succeeding fiscal year. In this fashion, State and local refugee assistance programs have been able to assure continued funding for vital refugee services.

Mr. President, this issue was not addressed by our colleagues in the House. Furthermore, the Senate draft prohibits any forward funding through to the next fiscal year. For this reason, it appears that this issue will be a conferenceable item.

However, herein lies my concern: because the present language expressly prohibits the traditional technique of forward funding, it is, therefore, necessary to strike it to allow for the continuation of appropriations for these vital services at the end of fiscal year 1987.

Mr. CRANSTON. Mr. President, I'd like to express my appreciation to my colleagues, Senators HATFIELD, WEICKER and JOHNSTON, for their cooperation in striking language which would have caused a hardship to a highly deserving refugee population in my home State of California.

This slight change in the language will allow one of the most critical components of refugee assistance—targeted assistance—to continue to be allocated beyond September 30, 1987.

Targeted assistance funds enable refugees to receive valuable training and social service programs which are crucial to their integration into the American economy. Again, my thanks for adoption of this simple, yet critical amendment.

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

The amendment (No. 3186) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3187

(Purpose: To extend the period for the commencement of construction under the rental rehabilitation and development program)

Mr. STENNIS. Mr. President, on behalf of the Senator from South Carolina [Mr. THURMOND], 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 Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3187.

Mr. STENNIS. 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 joint resolution, insert the following:

SEC. . Section 17(d)(4)(G) of the United States Housing Act of 1937 is amended by inserting before the semicolon the following: "(36 months after notice in the case of projects for which funding notices were issued prior to July 23, 1985)".

Mr. THURMOND. Mr. President, the amendment I offer today is a simple one. It would provide communities that were early recipients of Housing Development Action Grants [HoDAG's] 1 additional year to begin construction on their projects. Current law requires that HoDAG projects begin within 2 years of notice of the award. If this requirement is not met, the recipient community will lose its grant money and thus, the additional rental property which the HoDAG Program was to make possible. Due to difficulties in interpreting and meeting the new HoDAG Program requirements, some localities have experienced delays in beginning work, which may cause them to miss the 24-month deadline. In addition, because of the uncertain nature of tax-exempt financing and other tax provisions which affect real estate investments, some communities have run into complications in structuring bond financing and ensuring the participation of private developers.

Mr. President, when H.R. 1, the Housing Act of 1986, was considered on the floor of the House of Representatives recently, an amendment was adopted which would extend the start of construction deadline for all HoDAG's by 1 year. My amendment is similar in that it would allow any community that received notice of its HoDAG award prior to July 23, 1985, one additional year to get started. This would increase the likelihood that many much-needed projects across our Nation will indeed become reality. I urge my colleagues to support the swift adoption of this important amendment.

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

The amendment (No. 3187) was agreed to.

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

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

The motion to lay on the table was agreed to.

□ 1230

AMENDMENT NO. 3188

Mr. STENNIS. Mr. President, I send an amendment to the desk in behalf of Senator LEAHY and Senator MOYNIHAN and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. LEAHY and Mr. MOYNIHAN, proposes an amendment numbered 3188.

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

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

The amendment is as follows:

On page 5 line 3, at the appropriate place in the bill, add the following language:

"The method of calculation, the preliminary fee, and the percentage established for administrative fees paid to a public housing agency administering a contract under this subsection shall be the method of calculation, the preliminary fee, and the percentage established by the Secretary as of September 30, 1986."

Mr. STENNIS. Mr. President, this amendment relates to the freezing of administrative fees paid to public housing agencies.

Mr. STENNIS. Mr. President, if there is no further debate on this matter, I move the adoption of the amendment.

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

The amendment (No. 3188) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3189

(Purpose: To provide for a waiver of certain requirements of title XIX of the Social Security Act with respect to care and services provided by the Medical University of South Carolina)

Mr. STENNIS. Mr. President, I send an amendment to the desk on behalf of Senator THURMOND, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. STENNIS], for Mr. THURMOND, proposes an amendment numbered 3189.

Mr. STENNIS. 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, add the following new section:

SEC. . WAIVER OF CERTAIN MEDICAID REQUIREMENTS

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984 and before July 1, 1985, to individuals—

(1) who are not described in section 1902(a)(10)(A) of such Act.

(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this section, are determined by the State agency administering or supervising the administration of such plan to have been so eligible.

Mr. STENNIS. Mr. President, this amendment proposed by the Senator from South Carolina [Mr. THURMOND] provides a waiver of certain requirements to the Social Security Act with respect to care and services provided by the Medical University of South Carolina.

Mr. THURMOND. Mr. President, on September 12, 1986, the Senate Finance Committee favorably considered H.R. 1868, the Medicare and Medicaid Patient Protection Act of 1986. Included in that legislation were provisions which would give the Medical University of South Carolina an opportunity to gain equitable reimbursement for health care services provided to certain Medicaid-eligible patients. Because of the importance of this legislation, its bipartisan support in the Finance Committee, the limited time available in this Congress, I am offering the same previously approved provisions as an amendment to the continuing resolution.

In October 1984, South Carolina implemented a medically needy program to provide for the cost of health care to pregnant women and children under the age of 18. Federal participation and cost sharing in this program was authorized under Medicaid.

At the time of program implementation, the South Carolina Health and Human Services Finance Commission and the South Carolina Department of Social Services made a concerted effort to insure that health care providers and potential recipients were

aware of the existence of the program by conducting health care provider workshops and public service announcements.

Based on the expanded eligibility criteria of this program, the Medical University of South Carolina provided services to 1,345 inpatients between October 1, 1984, through June 30, 1985.

Because many rules under this new program were new and different from other health care programs for the indigent, and a large number of recipients were involved, the application process was very slow and ineffective during the first 6 to 9 months of program implementation. Individuals who may have been eligible were not covered because of these delays.

Due to these delays, the Medical University was unable to obtain reimbursement from the Federal Health Care Financing Administration [HCFA]. HCFA is prohibited by the Social Security Act from providing reimbursement beyond a 3-month period before the date an application is filed by a potential program beneficiary.

In sum, health care services for the indigent have been provided to those who would have been eligible under the new program. However, delays in determining eligibility prevented certain health care providers from receiving equitable reimbursement for those services. The State authorities merely seek another opportunity to establish eligibility under the program for those who were provided these necessary services between October 1, 1984, and June 30, 1985. In order to obtain Federal reimbursement the State would have to establish eligibility within 6 months after the date of enactment of this legislation.

This legislation was previously included in H.R. 1868, the Medicare and Medicaid Patient Protection Act of 1986, which was favorably considered by the Senate Finance Committee on September 12, 1986. Because of the importance of this matter, I strongly urge my colleagues to support this amendment.

Mr. STENNIS. Mr. President, if there be no further debate, I move adoption of the amendment.

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

The amendment (No. 3189) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. STENNIS. Those are all the amendments I have.

Mr. RUDMAN. Mr. President, I am going to pose a unanimous-consent request, and if I might have the attention of the managers of the bill, I want to state what would happen. Here last evening there was an attempt to have an amendment to the legal services portion of the bill. It was well known to many people. It was originally put on the list. Senator HOLLINGS has cleared it. It has been cleared on our side.

It is something that changes one of the restrictions we had that has been cleared all the way around.

I ask unanimous consent that I might offer this amendment considering that the list was at least in theory closed off last night.

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

Mr. RUDMAN. I thank the Chair and the distinguished managers.

AMENDMENT NO. 3190

(Purpose: To modify the conditions relating to the appropriations for the Legal Services Corporation.)

Mr. RUDMAN. 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 New Hampshire [Mr. RUDMAN] proposes an amendment numbered 3190.

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

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

The amendment is as follows:

On page 2, line 24, strike "." and insert the following: ", except that, for purposes of this joint resolution, the paragraph under the heading 'Legal Services Corporation' shall be amended by striking the last proviso and inserting in lieu thereof the following: 'Provided further, that if funds become available because a national support center has been defunded or denied refund pursuant to section 1011(2) of the Legal Services Corporation Act, as amended by this Act, such funds may be transferred to basic field programs, to be distributed in the manner specified by this paragraph, if the Appropriations Committees of both Houses of Congress have been notified pursuant to section 607 of this Act: Provided further, that none of the funds appropriated by this Act may be used to implement or enforce the regulations issued by the Legal Services Corporation regarding legislative and administrative advocacy (45 CFR Part 1612) printed for final publication in the "Federal Register" on May 31, 1984, (49 FR 22651) and on August 1, 1986 (51 FR 27539)'."

Mr. RUDMAN. Mr. President, this amendment permits the Legal Services Corporation to transfer funds under existing committee reprogramming statutes from the national support earmark if conditions described in the statute have been met such as reprogramming would not be permitted under the bill as it presently lies before the Senate.

Second, the amendment permits the corporation to attempt to write a new regulation relating to lobbying which meets criteria set forth by statute. As reported by the committee the corporation would not have that authority.

Mr. President, this amendment alters the provision in the Commerce-Justice-State appropriations bill relating to the Legal Services Corporation in two respects. First, LSC's authority to attempt to write regulations regarding legislative and administrative advocacy is restored. Second, LSC is permitted to reprogram funds from national support to basic field programs under certain conditions if, and only if, the reprogramming procedures applicable to the Commerce-Justice-State bill are complied with.

In agreeing to this amendment, Mr. President, I would like to stress one point. Although the Legal Services Corporation represents only about 2.5 percent of the Commerce-Justice-State appropriations bill, the committee has had more difficulty with reprogramming from LSC than from all other agencies in the bill combined. The committee action on LSC reflects that difficulty. If there are future problems with LSC relating to reprogramming, next year's LSC appropriation may be so specific as to even specify the number of paper clips and telephones to be funded.

In 1983, an agreement vas reached in the Senate and enacted into law relating to the future direction of the Legal Services Program in a number of areas. This compromise was a product in the truest sense of the term. While most Members of the Senate had problems with one or more provisions of the compromise, a substantial majority of the Senate would vote against any effort to deviate from it, whether in a more liberal or in a more conservative direction.

Unfortunately, LSC management in the last year has failed to absorb that clear message and tried to stray from the reservation, to use an old colloquialism. The Appropriations Committee responded to this and tried to force LSC compliance with congressional intent by restricting LSC's authority in a number of ways. In my view, an overwhelming majority of the Senate, certainly no less than 65 Members, would have voted against any effort to amend the committee's provision.

However, the Senator from Utah, Mr. HATCH, through sheer perseverance and force of argument has managed to persuade this Senator and others that the committee overreacted in some respects. This amendment addresses those issues. It has been cleared by the Senator from Utah, the Senator from South Carolina—the ranking member of the subcommittee—and the floor managers. I urge its adoption.

Mr. President, I believe this has been cleared on

both sides by the managers on both sides.

I yield the floor.

Mr. HELMS. I wonder if the Senator from New Hampshire, the chairman of the Commerce-Justice-State Appropriations Subcommittee, would be willing to answer a few questions regarding the provisions relating to the Legal Services Corporation.

Mr. RUDMAN. Certainly.

Mr. HELMS. Am I correct in my understanding that the agreement that has been worked out regarding the LSC still prohibits the Corporation from enforcing its lobbying regulation?

Mr. RUDMAN. The Senator is correct. The Appropriations Committee adopted language which, in effect, nullified the regulation recently promulgated by LSC because it did not comply with the statutory requirements, and that is retained. However, the language recommended by the committee which prevented LSC from drafting a replacement regulation has been deleted. It should be noted that the appropriations rider on lobbying is quite detailed and LSC can quite easily police improper lobbying by enforcing the statute directly.

Mr. HELMS. Does the Senator object to a limitation on grassroots lobbying.

Mr. RUDMAN. No. In fact, I have consistently supported an absolute prohibition on grassroots lobbying and I believe that the appropriations rider, of which I was one of the primary authors and which is now entering its fourth year, does just that.

Mr. HELMS. Does the Senator object to a restriction on solicitation of clients for legislative advocacy?

Mr. RUDMAN. Although the appropriations rider on lobbying does not address this issue, the LSC Act specifically prohibits the solicitation of clients in violation of an attorney's professional responsibilities and also prohibits LSC-funded attorneys from engaging in any activity in violation of the ABA's Code of Ethics, which includes provisions relating to solicitation of clients. In addition, LSC-funded attorneys are bound by the canons of whichever State bar association they belong to. Thus, there are restrictions in place. Whether additional restrictions are necessary would depend on what kind of evidence there is regarding ongoing abuses or improper, if not illegal, activities.

Mr. HELMS. Does the Senator object to a prohibition on maintaining full-time lobbying offices in Washington or State capitals.

Mr. RUDMAN. My answer to that, without trying in any way to be facetious, is that it depends on what kind of activities fall under the Senator's definition of lobbying. If by lobbying the Senator is referring to efforts to influence the actions of a legislative body, then I believe that the restrictions on lobbying embodied in this bill are so great that it would be difficult or impossible for a program to justify such a full-time office.

It should be noted that the appropriations rider prohibits LSC funds from being used to pay for any administrative or related costs in connection with prohibited legislative or administrative representation. No evidence has been presented to the committee which would indicate that this provision is inadequate in its current form.

Mr. HELMS. It is my understanding that many legal services lawyers believe these types of lobbying activities are currently permissible and that the LSC regulation prohibits them. Why would the Senator oppose such a regulation? If these activities are prohibited by the appropriations rider but are occurring anyway, it appears that a regulation is desperately needed.

Mr. RUDMAN. The Appropriations Committee opposed the lobbying regulation because, in a number of areas, it clearly conflicts with the statutory appropriations rider. Prime examples include the application of the appropriations rider to non-Federal funds, the imposition of a 100-percent timekeeping requirement on certain LSC attorneys, and the decision to define certain types of administrative advocacy as legislative advocacy. To use an analogy, if the New Hampshire Legislature were to pass a statute stating that the maximum speed limit in the State was to be 50 miles per hour, the Department of Transportation could not adopt a regulation setting it at either 45 or 55.

In response to the Senator's other question, I would note that the Appropriations Committee has been presented with no evidence by the Corporation or anyone else regarding violations of the appropriations rider. It is my belief that the rider has, in fact, successfully stopped the improper political activism which occurred all too frequently prior to 1982. If violations are occurring, LSC has the means to and should take appropriate disciplinary action. If evidence is presented which shows the current rider is inadequate, I would certainly be willing to consider changes.

Mr. HELMS. Does this agreement allow LSC to transfer all $15 million of funds from national and State support centers, which offer no direct services to the poor, to direct service programs so that those grantees can freely choose how this $15 million should be spent?

Mr. RUDMAN. If a national support center is defunded or denied refunding pursuant to the LSC Act and this bill, the funds thus made available could be transferred to basic field programs if the reprogramming requirements are met. The total amount provided in the bill for national support is $7.5 million. It should be noted that the Corporation cannot simply transfer funds away from national support centers or any other grantee; rather, there are a number of statutory due process requirements which are unchanged by this bill.

With regard to the $7.8 million earmarked for State support, those funds must be spent on State support activities unless a statutory provision authorizing the transfer of funds is agreed to. Incidentally, most of the recipients of State support funds are basic field programs.

Mr. HELMS. So this agreement, in these tough budget times, mandates that these research centers must be funded at present levels and the Corporation cannot move that money as a budget line into direct services in local legal services offices?

Mr. RUDMAN. This bill provides national and State support with 4.3 percent less money in fiscal year 1985 and about 10 percent less than in fiscal year 1981. I am talking about actual dollars; if one were to take into account inflation, the reduction would be much greater. Increasing the funds available to the local programs has been and will continue to be a priority of mine. I believe the record will show that basic field programs are getting a higher percentage of the legal services dollars than they ever have before. However, it must be noted that the implications in the Senator's last two questions—that support centers do not provide direct and other important legal services—is less than universally accepted.

Mr. HELMS. Is the Senator aware that LSC has recently completed monitoring of the 17 national support centers and that the first two programs they reviewed were discovered to have grossly misused their grant moneys. Does the Senator intend for this language to protect these wasteful grantees?

Mr. RUDMAN. I am aware that LSC has complete monitoring visits on at least 16 of the national support centers. I do not know if one has been done on the National Center for Medically Dependent Children in Indiana. If one has not be done for that, I hope it will be soon.

I do not know how many of the reports from those site visits have been completed or what they show. I am aware that, based on those reports, defunding procedures have been initiated against two programs. It may be that the other 14 passed with flying colors, or the opposite may be true. The language in this bill is not intended to and does not protect wasteful grantees. I cannot say whether LSC's charges regarding the two programs, charges soon to undergo administrative hearings, are accurate.

Mr. HELMS. Am I correct in my understanding that the more than 50-percent reduction to LSC's oversight funding will be corrected in conference?

Mr. RUDMAN. The committee did not reduce funding for LSC's management and administration, only a portion of which is for oversight, by more than 50 percent as have been charged. The committee attempted to provide LSC with $10.7 million for management and administration, the same amount it appropriated last year before sequestration, with a combination of $5.7 million in new budget authority and $5 million in unobligated funds carried over from fiscal year 1986. This was, admittedly, less than the $13.1 million requested by LSC.

Based on information provided by LSC last week, it now appears that the committee may have overestimated the amount available in carryover funds by as much as $1.7 million. To the extent the committee overestimated carryover funds, it is my intention to secure an agreement in conference to increase the $5.7 million in new budget authority provided for management and administration so as to provide total funding of $10.7 million.

Mr. HELMS. How will these reduced funds be restored? There is monitoring activity, for example, going on in North Carolina now. Will there be sufficient funds to complete that monitoring?

Mr. RUDMAN. I cannot answer the first question with certainty, although I am confident the conferees can find an appropriate offset. The answer to the second question is yes.

Mr. HELMS. I thank the able Senator.

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

The amendment (No. 3190) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3191

(Purpose: Relating to the terms and conditions upon which assistance is provided for Africa)

Mrs. KASSEBAUM. 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 Kansas [Mrs. KASSEBAUM] proposes an amendment numbered 3191.

Mrs. KASSEBAUM. 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 4, line 16, insert before the period a colon and the following: *"Provided,* That the provisions in such bill under the heading 'Assistance for Africa' shall not apply."

Mrs. KASSEBAUM. Mr. President, my amendment addresses a problem that was raised last night by Senator EVANS and Senator DANFORTH, and others, authorizing in an appropriations bill. This problem occurs in several sections of the foreign operations appropriations bill.

I am particularly concerned about the section entitled assistance to Africa which my amendment would strike. This amendment essentially makes law S. 2208 which provides authority to dramatically restructure aid to Africa.

There may be considerable merit and I think there is in the recommendations made in this section. They may be recommendations that we want to apply to our approach to other regions of the world.

But, Mr. President, this is not the way to enact legislation. There have been no hearings by the authorizing committee, no examination of any sort of the implications of the bill and no recommendation by the authorizing committee.

Inclusion of this section in the continuing resolution circumvents the entire process. We should not be providing 1 year authority to restructure foreign assistance in the appropriations bill.

I not only recognize but I share the concerns of Senator KASTEN and Senator KENNEDY, who are authors of this legislation who I think have done a very good job in raising a very important issue and I look forward to working closely with them on this issue as we approach an even tougher budget cycle next session.

I happen to believe the restructuring of our foreign aid assistance is very important and the right time will be next year when the reauthorizing legislation will be before us. But this is not the time nor the place.

Mr. KASTEN. Mr. President, the Senator from Kansas is correct. The provisions she refers to in her amendment is authorization legislation.

The committee recommended the assistance for Africa in fiscal year 1987 be made available in accordance with the provisions of legislation introduced by myself, Senators KENNEDY, INOUYE, SIMON, ANDREWS, KERRY, MATSUNAGA, DANFORTH, GORE, LEAHY, BINGAMAN, METZENBAUM, and D'AMATO.

S. 2208, entitled the "African Famine Relief and Recovery Act," is followup legislation which we believe is required for long-term development assistance in drought stricken subsaharan Africa.

The provisions of that legislation in general provide the type of flexibility required for programs in Africa by establishing a permanent fund for long-term assistance, strengthening, and expanding current authorization language by making its implementation more flexible than aid programs elsewhere.

It emphasizes the role of voluntary agencies and international organizations, mandates policy reform, especially in the agricultural area, and requires steps to achieve better international cooperation and coordination of African aid programs.

Mr. President, legislation along these lines is very badly needed. The committee did not enact S. 2208 but provided that its authorities could be utilized for 1 year while comprehensive legislation was being developed by the authorizing committees.

Mr. President, the sponsors of this legislation and the Appropriations Committee want the full cooperation and frankly the support of the authorizing committee in this very important endeavor.

In view of the concerns and the sentiments expressed, particularly by the Senator from Kansas, I would therefore be willing to——

Mr. DODD. Mr. President, will the Senator yield before making that motion?

Mr. KASTEN. I am pleased to yield.

Mr. DODD. I thank my colleague from Wisconsin for yielding.

I commend him for the action I think he is about to take on this. I want to associate my remarks with those of the Senator from Kansas. It really is, if I may say briefly to my friend from Wisconsin, it really is tragic that we go through this every year in one area or another where we find we are not conforming the authorizing legislation.

Senator EVANS last night expressed this same issue in a peripheral way. But it seems to me we really got to get ourselves better coordinated on these issues. If we do not, there really is not much point in having authorizing committees to examine the policy questions.

The distinguished Senator from Kansas spends countless hours listening to virtually dozens and dozens and dozens of witnesses who come before our committee to talk about these issues and try and explain how they best work.

□ 1240

If we are going to go through that process and then find, in the final analysis, that the advice and the counsel of the authorizing committee, in this case the Foreign Relations Committee, is not going to be heeded, then we really are wasting our colleagues'

time and the taxpayers' time, if you will.

So I appreciate the fact that this is being pulled down, but I would really hope, and I realize that this process has become tremendously complicated, but nonetheless it is one that we have really got to change or we are going to find ourselves running into each other every year in this same manner.

I thank my good friend from Wisconsin for yielding.

Mr. KASTEN. I thank the Senator. I would say that the amendment is not being pulled down. The amendment is going to be accepted, and the reason it is going to be accepted is, it is in the interest of working with the authorizing committee.

I might remind the Senator that 2 years ago I was asked to put the entire foreign relations bill into my bill and carried it into the conference, kept it in the conference, and finally it was dropped because it was not accepted by the Democrats. And it is not right.

But, in this bill we have got other authorization language, not just in the foreign relations area. But specifically in the foreign relations area, we have a child survival fund section, a narcotics section, African Development Foundation, decisions that were made that are in coordination with the committee.

But we just have to work together. And that is what we are doing in the proceedings right now.

What I would like to do is recommend the committee accept this amendment, provided that we can be assured of consideration on this or similar legislation early next year in your normal hearing process. I wonder if you cannot only speak for yourself, as chairman of the subcommittee, but also for the chairman of the committee and ranking member, in terms of the fact you would be willing to work with us and to accept a number of these kinds of recommendations in your normal legislative process.

Mrs. KASSEBAUM. Mr. President, I can assure the Senator from Wisconsin that we will look forward to, as a committee, working with you and the other cosponsors of the legislation. As I said, I think it is an important initiative, an important piece of legislation.

I would also like to thank the Senator from Connecticut, because it is a concern. As a matter of fact, I think it is a mistake for us to have some other parts of the foreign aid which should be authorization that we have just added to appropriations. Again, it is not the best way to do it. But I think that those are different circumstances.

I very much appreciate your acceptance of this amendment and look forward to giving this a major effort at the time of reauthorization the first of the year.

Mr. KASTEN. Mr. President, I thank the Senator.

Mr. President, I will yield the floor, but I just want to state to the chairman and ranking member I would recommend we accept this amendment under the circumstances and conditions just described.

Mr. KENNEDY. Mr. President, I thank the Senator from Wisconsin [Mr. KASTEN], and I was pleased to join him in introducing earlier this year the African Famine Recovery and Development Fund.

As he indicated, I believe the provisions of our bill are urgently needed to provide greater flexibility to our programs of assistance in Africa—particularly in those areas which have been hit hardest by drought. If Africa is ever to achieve self-sufficiency in food it will need the kind of assistance, the kind of reforms, that our bill would promote.

But given the assurances, and the obvious concern of the Senator from Kansas—and her leadership of the Subcommittee on Africa of the Foreign Relations Committee—I will join with the Senator from Wisconsin in support of her amendment.

I do believe there is an urgent need to act, and I am delighted the Senator from Kansas has indicated a willingness to do so. I should also note that our colleague in the House of Representatives, the distinguished chairman of the House Committee on Foreign Affairs, Mr. FASCELL, has also introduced similar legislation and has promised action early next year in the context of the renewed authorization of the Foreign Assistance Act.

Again, I thank the Senator.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland sought recognition first.

Mr. SARBANES. Mr. President, I want to commend the Senator from Kansas for offering the amendment and for the position she has taken. I think over the years we have tried very hard to develop comity between the Foreign Relations Committee and the Foreign Operations Subcommittee of the Appropriations Committee and I think, generally speaking, with some success.

But this way of doing business obviously leads to a breakdown in the process. I mean, here we are with every appropriations bill in one big package and difficult problems for the authorizing committees. I simply share the sentiments expressed by my two colleagues on the Foreign Relations Committee, the Senator from Kansas and the Senator from Connecticut.

I also want to commend the Senator from Kansas for the very keen interest she has taken with respect to the problems of development assistance for Africa. She has been a very strong leader in that regard and reflected, I think, a great deal of wisdom and sensitivity on that issue and it is, of course, reflected once again here on the floor of the Senate.

Mr. DODD. Mr. President, will my colleague yield?

Mr. SARBANES. Certainly.

Mr. DODD. I just want to correct something. I misspoke when I talked about pulling the amendment down. The Senator from Wisconsin properly corrected me. I was assuming the amendment was coming from another area. I want to correct that statement.

Mr. President, the Senator from Maryland is absolutely correct. This is the amendment of the Senator from Kansas.

The Senator from Wisconsin is right. There have been years when we have not been able to get our authorizing work done and we were faced with that. That is our problem. We deserved to be criticized when the committee was unable to get a bill to the floor or get it passed on the floor or get the House language done in those years. Something had to be done, obviously, and you have been very gracious, along with the Senator from Hawaii, to accommodate us in that regard.

This year, however, we got our work done. We have authorizing bill under the leadership of the distinguished Senator from Indiana, Senator LUGAR. It has taken a lot of hard work to get to that point.

Finally, I want to commend the Senator from Kansas for what she is doing and second the remarks of my colleague from Maryland. She has taken probably the strongest leadership in this area in my 6 years in the Senate of the United States. An awful lot of times people talk about Africa, but people do not get out and do the hard work on it. I commend her for it.

Mr. SARBANES. Mr. President, I simply want to add, there has generally been good cooperation between the authorizing committee, the Senate Foreign Relations Committee, and the Foreign Operations Subcommittee of the Appropriations Committee.

I do not think that this present discussion ought to be interpreted as reflecting any conflict or tension between the members of those respective committees. It really reflects sort of the system not working. It is not that the people trying to make the system work have in any deliberate way tried to create problems, at least as I perceive it. In fact, in the past, as the Senator from Connecticut has pointed out, there has been close consultation. There was a time back when we had a little difficulty and that was all smoothed out. And I think that this simply reflects the fact that the system is not working very well and we need to address how we can improve it in order to have the proper relation-

ship, timewise, between the authorizing and the Appropriations Committee.

Mr. PELL. Mr. President, I am pleased to join my distinguished colleague on the Foreign Relations Committee, the Senator from Kansas, in cosponsoring an amendment which would strike the section entitled "Assistance to Africa."

As the ranking Democratic member of the authorizing committee it is my firm belief—expressed many times in the past 5 years in this body—that regular process must be adhered to. First, there ought to be an authorization which sets policy and ceilings for foreign aid spending, and then there ought to be an appropriation which allocates funds within those ceilings and those policy guidelines. All too often in the past, this process has been violated—often to the detriment of a sound, well-considered public policy. It is time, particularly when we face massive and mounting deficits in the Federal budget, that we return to the regular process and insist that those ceilings established in law by the authorization legislation—which was carefully developed by the committee and overwhelmingly approved by this Congress just last year—be honored.

Mr. President, 2 years ago, I stood on this floor and listened to colleagues on both sides of the aisle inveigh against a proposal propounded by the then chairman of the Foreign Relations Committee, Senator PERCY, which would have provided an authorization for the foreign aid appropriations proposed in the continuing resolution for fiscal year 1985. The arguments which ultimately prevailed were that the chairman was advocating circumvention of the normal legislative process in pressing for inclusion in the continuing resolution of a bill that had only passed the House, and although reported out favorably by the Foreign Relations Committee, had never been passed by the Senate. Well, Mr. President, those same voices have been silent this year, with this new continuing resolution. This time, it is proposed that we enact into law, purely by reference, S. 2208—a bill which has never even had a hearing, has been formally approved by no committee, and has been passed by neither the House of Representatives nor the Senate.

Mr. President, the bill contains an egregious example of circumvention of congressional legislative process if ever there was one. If this provision of the foreign assistance appropriations bill, a section entitled "Assistance for Africa," is permitted to stand, it would permit the transfer of all development assistance for Africa in any fashion the administration deems appropriate. That means that all of the development aid now planned for Africa, some $340 million, including the 12-year effort in the Sahel, could be transferred to favored nations whose economic and/or political policies are compatible with our own. It could also mean that all funding for health or family planning in Africa would be terminated and the bilateral assistance targeted exclusively at agriculture, or at private sector activities.

These may be worthy goals, but they deserve a careful scrutiny before we embark on this massive overhaul of our bilateral development program in a continent that has so recently experienced severe drought, crop failure and actual famine and starvation. To trust that the provisions of S. 2208, the Africa Famine, Recovery and Development Fund Act of 1986, are the correct way to address Africa's burgeoning development needs without a single hearing on its merits is to make a mockery of the Congress' very legislative process itself.

Mr. President, for these reasons I join with my colleague on the Foreign Relations Committee in moving to delete this provision in the continuing resolution and urge my fellow Senators to support our amendment.

Mrs. KASSEBAUM. Mr. President, I very much appreciate the consideration of the Senator from Wisconsin. I think some good points have been raised. I know that in this area we have a good working relationship and I think it will benefit the process next year.

I appreciate the comments of the Senators from Connecticut and Maryland and move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas [Mrs. KASSEBAUM].

The amendment (No. 3191) was agreed to.

Mrs. KASSEBAUM. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was ageed to.

Mr. JOHNSTON. Mr. President, let me say that we are making tremendous progress on this bill and, with a little restraint, a little forebearance, a little cooperation, I believe we can finish the bill today. Many of these difficult amendments have either gone away or are in the process of going away and many of the other amendments which are eligible are what we would call sort of placeholder amendments, protection amendments that will not come about.

So, Mr. President, I would ask Senators, if they have amendments on the contested list, those that are eligible for rollcall votes, to please be ready to move on those because, with some luck, we could be out of here so that those who have 4 o'clock planes to catch might be able to do so.

Mr. President, one of our more difficult amendments is that relative to food assistance eligibility to be offered by the distinguished Senator from Montana, Mr. MELCHER.

Mr. President, he has offered, in return for our agreeing not to raise germaneness under rule XVI and to allow him 30 minutes of debate before a tabling motion is agreed to, that he would, in effect, hold his statement to 30 minutes or 30 minutes total on his side.

I do not make that unanimous-consent request at this time, but wish to make Senators aware of the possibility of that request later. Frankly, I believe we should go along with that request because it would limit the total consideration of that amendment to probably a little more than 30 minutes and would allow us to expedite the consideration of what remains the most difficult amendment.

□ 1250

I thank the Senator from Ohio for yielding to me.

AMENDMENT NO. 3192

(Purpose: To amend title 11, United States Code, the Bankruptcy Code, regarding benefits of retired former employees)

Mr. METZENBAUM. Mr. President, on behalf of myself, Senator THURMOND, Senator HEINZ, Senator GLENN, Senator SPECTER, Senator DENTON, Senator DURENBERGER, Senator SIMON, Senator LEVIN, Senator BYRD and, Senator QUAYLE, 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], for himself, Mr. THURMOND, Mr. HEINZ, Mr. SPECTER, Mr. GLENN, Mr. DENTON, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, Mr. BYRD and, Mr. QUAYLE proposes an amendment numbered 3192.

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

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

The amendment is as follows:

At the appropriate place in the resolution, insert the following:

SEC. . (a) Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987 to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

(b) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for

reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that become subject to chapter 11, title 11, U.S. Code, after October 2, 1986.

(c) This section shall not apply during any period in which a case is subject to chapter 7, title 11, United States Code.

Mr. METZENBAUM. Mr. President, this amendment is intended to protect the life, health and disability benefits of retirees.

It is a response to the action of LTV which unilaterally ceased paying these benefits upon filing for bankruptcy.

This amendment prevents LTV or any other company from terminating these benefits until May 15, 1987. By that time Congress will have had an opportunity to study the bankruptcy laws and determine what if any change is necessary to protect retirees.

I commend the chairman of the Judiciary Committee for working out this measure.

It is an amendment that has been cleared on both sides. There has been a lot of negotiation in connection with it.

I believe we are ready for the vote.

Mr. THURMOND. Mr. President, this amendment creates a new provision in the Bankruptcy Code which will protect the health and life insurance benefits of retirees when their former employers file for bankruptcy. This provision will provide this protection until May 15, 1987, in order to give Congress time to act on the broader question of how retiree benefits are to be treated under the Bankruptcy Code, and especially under section 1113.

This new provision is not to be read or interpreted as affecting the interpretation of section 1113 of the code. I have participated in drafting this amendment with that purpose clearly in mind, and I know that that is the intent of both Senator METZENBAUM and Senator HEINZ, who worked with me in the drafting of this amendment It was only with this understanding that I have consented to allow the Senate to consider this amendment in the closing days of the session.

Mr. President, I want to make it completely clear, as Senators HEINZ and METZENBAUM understand, that this amendment does not affect the interpretation of section 1113 in any way.

Mr. HEINZ. Mr. President, I am pleased that Senator METZENBAUM and I were able to reach an agreement with Senator THURMOND on an amendment to protect the health benefits of retirees of companies entering into bankruptcy.

On July 17, the LTV Corp. filed for bankruptcy under chapter 11 and unilaterally terminated its retiree health plan, stopping the payment of health benefits for 78,000 retirees. The fact that a company not only could terminate retiree health benefits at will, but would also argue that it was required to under the bankruptcy law, was a surprise as well as a deep concern for many of us in the Congress.

Senator METZENBAUM and I introduced legislation on July 25 directing LTV to reinstate health and life benefits for its retirees until the Bankruptcy Court ordered their cessation. It was certainly our view at the time that LTV could not unilaterally terminate benefits under a collective bargaining agreement, and it was our intent to force a review by the court before these benefits could be stopped. The Senate passed this bill by voice vote, and LTV immediately petitioned the Bankruptcy Court to permit it to reinstate benefits. Although health benefits are currently being paid for LTV's retirees, other creditors have now appealed to have these benefits terminated—and they could well be terminated in the next few months.

On September 10, Senator METZENBAUM and I introduced another bill—this time to clarify our view that retiree health benefits included in a collective bargaining agreement are covered under the procedures of section 1113 of the Bankruptcy Code governing termination of collectively bargained benefits. I have believed all along that the company could not legally reject health benefits included in the collective bargaining agreement without negotiating with the union as provided for under section 1113. Our bill was intended only to restate our view of current law.

Unfortunately, it is not possible for us to fully resolve this issue, as we would like. We have discussed the issue with Senator THURMOND, and this is a clarification that we will have to take up again in the Senate next year. Instead, we are willing today to simply clarify that LTV, and indeed any other company in bankruptcy, must continue to pay its health benefits to all retirees until May 15, 1987. This will ensure that LTV retirees and retirees of other companies in bankruptcy will continue to receive their health benefits until we can return in the next Congress and resolve the broader issue. Let me say, Mr. President, that I fully intend to seek such a resolution next year.

In the meantime, I am willing to agree with Senator THURMOND that this statement about the obligations of companies in bankruptcy over the next several months is not intended to reflect one way or the other on the question of what is and is not protected under section 1113. In other words, we do not intend to affect the interpretation of section 1113 by making a statement here today about any company's obligations to pay benefits.

Mr. President, this is intended to be a stopgap measure only—but one that will provide real protection for retirees across this country for the next several months. I want to thank the distinguished chairman of the Judiciary Committee, the Senator from South Carolina, for his efforts over the last few days to help us find a way to protect retirees of companies in bankruptcy.

Mr. GLENN. Mr. President, I am a cosponsor of this amendment to the Bankruptcy Code which would require the trustee for companies filing for reorganization under chapter 11 of the Federal Bankruptcy Code to continue paying benefits to all retired former employees. I believe this amendment is necessary in order to protect retirees whose benefits are important to their livelihood.

This legislation would require a trustee to continue paying until July 7, 1987, the life and health insurance benefits of all retired former employees. This amendment along with the House-passed bill would ensure that all retirees receive the life and health benefits they earned and deserve.

Mr. President, Congress did not intend to leave retirees out in the cold when it enacted chapter 11 of the Bankruptcy Code. This is evidenced by the statutory language, legislative history, and prior Federal court decisons. This amendment is necessary to further clarify this intent.

Termination of life and health insurance benefits creates an intolerable situation for retirees and puts at risk the very men and women who spent their lives working to make the company strong. Since many retirees are under 65 and consequently not yet eligible for Medicare, they are heavily dependent upon their insurance benefits.

Since we do not know the financial situation of every company filing for chapter 11 reorganization, we do not know how much of a burden this bill would impose. That was for the courts to decide prior to this amendment and shall continue to be so once this amendment is enacted.

I believe it is imperative that we enact this legislation to clarify this issue and to protect our retired workers both now and in the future. Thank you.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the amendment has been cleared on this side.

Mr. HATFIELD. Mr. President, the amendment has been cleared 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 Ohio.

The amendment (No. 3192) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Louisiana seek recognition?

Mr. JOHNSTON. Mr. President, as soon as the Senator from Montana is present in the Chamber, we will make the unanimous-consent request with respect to his amendment.

We are now eligible to bring up any of the other amendments. I hope we would quickly do so because people have planes to catch, and we are getting to the very end of this continuing resolution.

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.

□ 1300

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

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

Mr. JOHNSTON. Mr. President, if I may have the attention of the majority leader, some 30 minutes ago Senator HATFIELD and I proposed that we would propound a unanimous-consent request to cover the Melcher amendment. With the consent of the majority leader, I would now like to propound that request.

Mr. President, I ask unanimous consent that the distinguished Senator from Montana [Mr. MELCHER] be recognized to bring up an amendment on food assistance; that he be allocated 30 minutes on his side for debate under his control; that at the conclusion of 30 minutes of debate on his side, and whatever debate would be given in addition to that on the other side, that the matter be eligible for a motion to table; that the motion to raise germaneness under rule XVI be waived, and that after the tabling motion is complete that all rights not otherwise waived under the earlier part of the unanimous-consent request would be preserved.

Mr. President, if I may explain briefly, what we propose here is that Senator MELCHER have 30 minutes for debate. We would not raise the issue of germaneness. After whatever debate we propose on this side, we would then propose, or raise, a tabling motion. Of course, if the tabling motion succeeds, that would be the end of the matter. If it does not, then the matter would be open for further debate or further amendment.

Mr. President, I ask unanimous consent as previously stated.

Mr. DOLE. It is 30 minutes on each side?

Mr. JOHNSTON. Thirty minutes for Senator MELCHER under his control and no limit on the other side.

Mr. DOLE. I see.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. MELCHER. Reserving the right to object, and I hope I do not have to object, basically what I asked was for the Senator from Louisiana to prepare this. But there is the question of second-degree amendments. I do not think we would want them to be eligible. The tabling motion is fine with me and if it is tabled we have had our vote. If it is not tabled, I think, if I heard correctly, germaneness could still be raised.

Mr. JOHNSTON. If the Senator would yield, the defense of germaneness under rule XVI would be waived both before and after the tabling motion.

Mr. MELCHER. Would it be all right to have second-degree amendments?

Mr. JOHNSTON. I think it would be best if the Senator would keep the right to keep second-degree on both sides. If it is not tabled, it may have to be modified in some way to make it suitable for acceptance.

Mr. MELCHER. And if it is not tabled, I guess there would not be a time agreement.

Mr. JOHNSTON. The Senator is correct.

Mr. MELCHER. I think it is a very fair, decent and honorable request. I thank the Senator.

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

AMENDMENT NO. 3193

(Purpose: To express the sense of the Senate that the Secretary of Agriculture should use existing stocks of wheat and corn to increase domestic commodity assistance; to dispose of surplus agricultural commodities to the Philippines, certain African nations, India, and Bangladesh, and for other purposes)

Mr. MELCHER. Mr. President, I send the 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 Montana [Mr. MELCHER] proposes amendment No. 3193.

Mr. MELCHER. 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 resolution, add the following new sections:

SEC. . It is the sense of the Senate that the Secretary of Agriculture should make available not less than $10,000,000 worth of flour and cornmeal using the wheat and corn stocks of the Commodity Credit Corporation. Such flour and cornmeal shall be in addition to the traditional level of assistance made available under section 1114 of the Agriculture and Food Act of 1981, section 416(a) of the Agricultural Act of 1949, section 4 of the Agriculture and Consumer Protection Act of 1973, and any other provision of law administered by the Secretary.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Republic of the Philippines at least 35 million bushels of wheat, 40 million bushels of soybeans, and 100 million pounds of dairy products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Of the amount of dairy products available under this section, at least 30 million pounds shall be non-fat dry milk, 45 million pounds shall be cheese, and 25 million pounds shall be butter.

(c) Commodities made available under this section during any fiscal year shall be subject to the agreement of the Republic of the Philippines—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to the amount of such agricultural commodities acquired through commercial arrangements during the preceding fiscal year;

(2) to sell any commodities furnished under this section in the Republic of the Philippines and to use the local currency generated from such sales (A) to carry out programs of assistance in the Republic of the Philippines and (B) to reimburse the United States for costs under paragraph (3) to the extent that such currencies are converted to dollars for such purposes or can be used to pay expenses of the United States as provided for in such paragraph; and

(3) to reimburse the United States for costs incurred in furnishing such commodities, including transportation and processing, during the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the Philippines.

(d) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Philippines and friendly countries of Africa, under paragraph (b)(11)(A) of section 416 of the Agricultural Act of 1949, at least 25 million bushels of wheat and 90 million pounds of dairy products (of which at least 40 million pounds shall be nonfat dried milk, 30 million pounds shall be cheese, and 20 million pounds shall be butter), notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to the amount of such agricultural commodities acquired through commercial arrangements during the preceding fiscal year;

(2) to sell any commodities furnished under this section within the nation and to use the local currencies generated from such sales to (A) establish and carry out a rural lending program in such nations in the manner provided for in section 108 of the Agricultural Trade Development and Assistance Act of 1954 and (B) reimburse the United States for costs under paragraph (3) to the extent that such currencies are converted to dollars for such purpose or can be used to pay expenses of the United States as provided for in such paragraph; and

(3) to reimburse the United States for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to—

(1) Nigeria, 50 million bushels of wheat, 165 million pounds of dairy products, and 40 million bushels of soybeans;

(2) friendly countries in Africa, other than Nigeria, 80 million bushels of wheat;

(3) India, 7 million bushels of wheat, 40 million bushels of soybeans and 80 million pounds of dairy products; and

(4) Bangladesh, 7 million bushels of wheat and 20 million pounds of dairy products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to the amount of such agricultural commodities acquired through commercial arrangements during the preceding fiscal year;

(2) to sell any commodities furnished under this section within the nation and to use the local currencies generated from such sales (A) to carry out programs of assistance in the country and (B) to reimburse the United States for costs under paragraph (3) to the extent that such currencies are converted to dollars for such purpose or can be used to pay expenses of the United States as provided for in such paragraph;

(3) to reimburse the United States for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

Mr. MELCHER. Mr. President, this is an amendment which has been in the making for several months. The amendment has two parts to it. I will briefly describe the first part.

It is a sense-of-the-Senate resolution that in the case of our programs here for our own domestic feeding for the poor, that the Secretary of Agriculture shall attempt, out of any funds available, to augment the processing of these commodities; namely, wheat for flour and corn for cornmeal.

That is for the obvious purpose of permitting those two commodities to be available now and during the rest of this fiscal year for the various types of feeding programs that we have for the poor, whether it is in the senior citizen centers which are eligible, whether it is in the Salvation Army dining halls which are eligible, or whether it is a distribution of the 5-pound flour bags or cornmeal bags to the poor in commodity distribution.

I believe we could all agree that when we run out of flour for this type of distribution, it is too bad, because we have so much wheat in Federal ownership that some of it is piled on the ground for lack of storage space. The same could be said of corn. When we start to harvest this year's crop of corn, it is contemplated that there will not be enough corn storage.

It seems to be all wrong if there is so much of a commodity available that we cannot even store it, that we cannot convert part of it, the wheat into flour and the corn into cornmeal, for adequate distribution through these programs.

In my own State of Montana, we find that there is no flour available right now for distribution. There has not been for a couple of months, and we do not think there will be any available for another 2 months. I think those may be the circumstances in several other States. I think that is deplorable.

So that is the first part of the amendment.

□ 1310

The second part deals with agricultural exports through the 416 Program, section 416 and section 108. It has taken a long time to draft this amendment in this form because we wanted to overcome any objection, any point of order on the question of budget. What you have before you meets that test.

It does meet the budget requirements. Section 416 is a program that is available under current law. This would broaden section 416 for a series of countries. Those countries are the Philippines, Nigeria specifically in Africa, all other friendly countries in Africa, India, and Bangladesh.

Section 416 is a government-to-government program or it can be from our Government to a private voluntary organization. It can be either way. In many of the government-to-government programs, when it gets to that part of the country where it is tested, it then becomes part of the private voluntary organizations efforts in that particular country.

It has been said that this is perhaps too much. It is on that point that I want to be very specific. The amounts that we list here country by country, in the case of Africa other than Nigeria, friendly countries in Africa, are those amounts that seem reasonable to me and to many others over a 3-year period. It is important to remember that. When you read these figures in this amendment, it is for 3 years because the 416 Program is set up for 3 years.

How many commodities are available in the United States? In current stocks right now, we have almost 2 billion pounds of dairy products. In current stocks under CCC ownership and under loan, which will be taken over by CCC if they still remain there after the loan period is out, almost 500 million bushels of soybeans. By the same token, under wheat, if you count what will come into CCC within a month or so, we have about 1½ billion bushels of wheat. It keeps going up.

Those are the three commodities that are involved here: wheat, soybeans, and dairy products. These amounts specified over 3 years are within the limits—well within the limits—of what we have available. They are, in most instances, just a tiny fraction of those three commodities. So in my view, I wish it could be larger, but for those who say perhaps it is too much for those countries to absorb, the amendment carries with it two limiting factors. One is that while the commodities themselves are owned by the U.S. Government, are in Federal ownership in Federal storage, and can be shipped under 416 to friendly countries as a donation, that is off budget. We have paid for it once. This becomes a donation to that particular friendly country which makes application for it.

So, although the amendment states that these commodities will be avail-

able in these amounts, staggered over the 3-year period, there are two criteria that must be met for any of these countries. The first is that the country involved must agree to pay the transportation charges and the processing charges. That is number one.

They pay it to the U.S. Government and that amount of money will then be spent in that country. In other words, we are not running into an exchange question, where you have a developing country's currency that simply cannot be converted into dollars readily, and therefore, how much is it worth, soft money. We avoid that situation and it is a limiting factor on the donation that can be made, because it must be either converted into dollars or be able to be utilized for programs that the United States has in that country. In other words, the soft currency issue is resolved. It is not soft currency.

The second point, and it is equally important, is the question, Is this additionality? Briefly, Mr. President, that term means, is this something that will be too much and therefore, in that particular country will displace what would otherwise be a commercial sale?

On that point, we raise this matter: There can be none of these donations unless the recipient government agrees that whatever they have purchased in that particular commodity during the preceding year from commercial sources must be purchased also in the year they are going to receive the donation through this program. I hope I have made that clear.

The two points that make this acceptable from a budget standpoint are that the question of who is going to pay for the transportation and processing costs is met by the provision that the government receiving the donation will pay for it. Second, the question, will this be displacement of what would otherwise be commercial sales, is met by establishing that a country applying for it must agree to purchase the same amount of this particular commodity that they are applying for in this donation—purchase the same amount commercially as they had heretofore. So I believe we have resolved those two points.

Briefly, Mr. President, what does this do for the United States? With the large agricultural surplus commodities that we now have in storage and with the amounts going up, it is very apparent that we must make every effort to utilize the programs we have available under our statute to broaden out those exports.

Let me be more specific on that. We are seeing the export figures decline year after year. Indeed, we are seeing them decline month by month.

□ 1320

We have had very startling circumstances develop this past May, June, and July where the United States actually imported more agricultural commodities than it exported. It is not so much that we are importing that much more in the way of food products from abroad. It is really a question of our exports continually sliding down.

Last year we had $32 billion, between $31 billion and $32 billion in agricultural exports from this country. It was projected by the Department of Agriculture that that would slip to $27 billion this year. In other words, about a 15-percent decline. It is now projected it will be even much worse than that; that we will probably slip another 6 or 7 percent beyond that and we are going to be looking at a 20- to 25-percent decline in this year's agricultural exports.

This is very damaging to the economy of the United States. First of all, as the surplus is overhanging the market, we find that commodity prices continue to go down. That gives us more Treasury exposure for our farm program costs. It gives us a real jolt so far as how much commodities are worth, and farmers' land value, the whole economy of rural America keeps going down.

The question is whether or not we can reach a stabilizing figure, where we start to increase agricultural exports so that commodity prices do not continually slide downward. This has been a neglected area. The type of program I am describing in this amendment and will be available for our use has been part of the decline. We simply have not been utilizing these types of programs, whether it is Public Law 480, or section 416 or section 108 which is covered in this amendment. We simply have not been utilizing them enough. It is not just enough that a few on the Senate floor or a few in the House or a few in the voluntary organizations say that. It is what agribusiness, particularly those involved in agricultural exports, have been documenting all summer long, all year long but specifically since July.

The leading export people involved with wheat, with corn, with soybeans, with rice, and with dairy products, have been meeting once a month to see if, collectively, they cannot be convincing enough to Congress and the White House to shift, to make a turn. This amendment, my colleagues, to attempt to begin to make that turn, is probably the last opportunity we have in this Congress to establish by congressional policy that we would like to make the turnaround, to establish that we must have the turnaround in the situation that now exists.

This amendment is designed to resolve some of the stumbling blocks that have held up this type of donation. I think perhaps we have not given enough credibility to the important part that Public Law 480 and related programs have played in stimulating U.S. agricultural exports.

Pools have been of great advantage to us. They have been widely used since their inception, going back into the East. We have never needed them more than we need them today. Yet, I am ashamed to say, I am very alarmed to say that the usual allocation process for Public Law 480, the Food-for-Peace Program, which is to be made by the administration by October 1, has not been made. To the extent that we can resolve some of their problems and some of the interagency fumbling regarding who makes the decision on what is acceptable and when do we actually increase our exports through these types of programs, this amendment would be helpful. To the extent that the farmers and ranchers in the United States are looking to Congress to see whether we will not move to enhance exports, this amendment is very encouraging. It will say the same thing for agribusiness. As of September 25–26, this agribusiness group, which meets regularly, some 29 of them, has signed a letter and sent it to the White House suggesting to the President two things: Number 1, that they be allowed to have a meeting with the President to describe the urgency of moving more aggressively and expertly. They say, in the letter to the President, which is a very brief letter, they would like to explain the seriousness of the situation so he understands it and hopefully will take a more active part in making sure that both the State Department and the Agriculture Department are more aggressive in this field.

They also point out that the broad array of the export programs which are available have not been used.

This amendment responds directly to that point on two programs, two very important programs, section 416 and section 108.

I believe, Mr. President, that an affirmative vote for this amendment will be a strong signal that, yes, we are going to make a turn in agricultural exports; yes, we are going to prudently and wisely use the food abundance we have to our own advantage and the advantage of these friendly countries; yes, we are going to use it as we know it works to develop long-lasting trade, that is beneficial both to the United States and to the friendly countries. I think it is most important that we have this amendment agreed to by the Senate so we can take those very meritorious and very urgently needed steps today.

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

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. In accordance with the agreement, there will be a motion to

table but that motion to table cannot be made until the Senator from Montana either uses or yields back his time.

Mr. MELCHER. Will the majority leader yield?

Mr. DOLE. I will be happy to yield.

Mr. MELCHER. We have had a couple requests, and I will ask the cloakroom to make sure those Senators know they can speak.

□ 1330

Mr. President, there may be a desire on the part of other Senators to speak. While we are waiting for them, I should like to take this time to describe what we are talking about for the 3-year period concerning the parts of the bill that deal with exports to friendly countries.

We are talking about a total, over the 3 years, of 8 million metric tons of commodities that are surplus. That is made up of wheat, soybeans, and dairy products.

If we are going to divide that by three for these countries, because it is 3 years, we are talking about approximately 3 million metric tons per year.

Each of these commodities is in surplus and in such quantities that we fear how great a surplus we are going to have next year and the year after, as compared to right now. The surplus is too high, it depresses the price, and is very damaging to the economy of the United States.

However, let me also point out that each of these has storage costs to the extent that we would reduce these surplus commodities over this 3-year period by these amounts, assuming—we cannot be sure, but just assuming—that the countries would meet the eligibility requirements on their application. We cannot be sure of that, but assuming that they would, what would it save? It would save $40 million for those 3 years, and that $40 million is a question just on part.

If all of them were eligible, which I am afraid will not be the case, for the maximum amount, because there are limiting factors that I described earlier—but if all of them were eligible, we would be talking about a saving, over 3 years, of more than $200 million in storage costs alone.

Mr. President, we are unwise, very unwise, to have huge surplus commodities in storage if there is a need for them, either by our own people here, through our own Commodity Distribution Program, or by friendly countries abroad. It seems almost immoral, almost unbusinesslike, almost self-defeating to watch the surpluses mount, without having plans to dispose of those supplies.

There are two things involved that change the aspect for the American agricultural economy if we adopt the amendment. One is that we start to turn the corner on agricultural exports. The other is that by doing so, we reduce the surplus to the extent that the programs are utilized. But there is a bonus, and that bonus appears when we consider the reduction in storage costs.

On all these aspects, I believe that the amendment is meritorious and is vitally needed at this time.

Mr. President, I am anxious to proceed with the vote; I am anxious to proceed with the bill. After allowing 5 minutes for anybody who wanted to speak, I am ready to yield back the remainder of my time, if the managers of the bill on the other side have no use for any more time.

Mr. HATFIELD. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

□ 1340

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 52, as follows:

[Rollcall Vote No. 325 Leg.]

YEAS—46

Armstrong	Hatfield	Roth
Boschwitz	Hawkins	Rudman
Broyhill	Hecht	Simpson
Chafee	Heinz	Specter
Cochran	Helms	Stafford
Cohen	Humphrey	Stennis
D'Amato	Kassebaum	Stevens
Denton	Laxalt	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Evans	Mattingly	Wallop
Goldwater	McClure	Warner
Gorton	McConnell	Weicker
Gramm	Murkowski	Wilson
Grassley	Packwood	
Hatch	Quayle	

NAYS—52

Abdnor	Eagleton	Melcher
Andrews	Exon	Metzenbaum
Baucus	Ford	Mitchell
Bentsen	Glenn	Moynihan
Biden	Gore	Nickles
Bingaman	Harkin	Nunn
Boren	Hart	Pell
Bradley	Heflin	Pressler
Bumpers	Hollings	Proxmire
Burdick	Inouye	Pryor
Byrd	Johnston	Riegle
Chiles	Kasten	Rockefeller
Cranston	Kennedy	Sarbanes
Danforth	Kerry	Sasser
DeConcini	Lautenberg	Simon
Dixon	Leahy	Zorinsky
Dodd	Levin	
Dole	Matsunaga	

NOT VOTING—2

Garn	Mathias

So the motion to lay on the table was rejected.

□ 1400

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to table was rejected, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. DOLE. 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.

□ 1410

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

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

Mr. JOHNSTON. Mr. President, we have——

The PRESIDING OFFICER. The motion to reconsider is the pending business and it is not debatable.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending matter be temporarily laid aside and that we proceed to consider the Kennedy health planning amendment under a time agreement of 10 minutes equally divided, the time to be under the control of Senator KENNEDY and the distinguished Senator from Oregon. I think we have already provided a unanimous-consent request to second-degree amendments.

I make that request.

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

The Senator from Massachusetts.

AMENDMENT NO. 3194

(Purpose: To appropriate funds for public health planning)

Mr. KENNEDY. 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 Massachusetts [Mr. KENNEDY] for himself, Mr. GORE, and Mr. KERRY, proposes an amendment numbered 3194.

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

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, there are appropriated $29,000,000 for carrying out sections 1516(a), 1525(a), and 1534(a) of the Public Health Service Act.

(b) Notwithstanding any other provision of this joint resolution, the amount appro-

priated by section 101(i) of this joint resolution for each program, project, and activity administered by the Public Health Service shall be reduced by an equal percentage in order to achieve a reduction of $29,000,000 from the total amount appropriated by such section for all such programs, projects, and activities.

Mr. KENNEDY. Mr. President, I yield myself such time as I might use.

Mr. President, I rise to offer an amendment to provide 6 months of funding for the health planning program—a total of $29 million. Without this funding, the program will die in just a few weeks.

Health planning is an essential component of our national effort to control health care costs and improve the quality of health care. Its elimination would be a cogent example of an action that is penny wise and pound foolish. A recent report by the Department of Health and Human Services reported that the program saves the Nation $6.6 billion annually. Approximately 40 percent of these savings go directly to reducing the budget deficit in the form of reduced expenditures for the Medicare Program.

Where States have chosen to drop health planning, the increase in costly and unnecessary health-care construction has been explosive—and provides a vivid illustration of what will happen to the Nation as a whole if my amendment is defeated. In Arizona, for example, the program was discontinued in 1982. In the last year of the program, there was only $8 million in hospital construction approved in the State. Last year, by contrast, there was $217 million in hospital construction actually underway, and the hospital occupancy rate has dropped from 62 percent to 54 percent.

It is because health planning is so essential in controlling health-care costs that continuation of the program is supported by both of the two large health insurance groups—Blue Cross-Blue Shield and the Health Insurance Association of America—as well as the Washington Business Group on Health, the AFL-CIO, and the AARP.

There are some who argue that the institution of prospective payment for capital under the Medicare Program will make health planning unnecessary. I do not believe this to be the case, but even if it is true, Medicare prospective payment for capital has now been postponed at least until fiscal year 1988.

Beyond its contribution to controlling health-care costs, health planning has other essential functions. Most important, it provides the data necessary to identify unmet health-care needs in our communities. When those needs are met, health planning provides a strong voice on behalf of those who might otherwise be left out by health-care provider decisions made solely on market grounds. The 37 million Americans without any health insurance need health planning to represent their interests in the day-to-day decisions made by health-care providers in every community in the country.

The only reason there is no money in this appropriations bill is the failure of the Congress to enact a new authorization. An authorization bill was reported out of the Labor Committee without opposition, but it has been blocked in coming to the Senate floor. The Senate deserves the chance to vote this program up or down. Enactment of this amendment will give the new Congress a chance to act one way or the other on a new authorization.

The cost of this modest amendment will be paid by a tiny percentage reduction in other public health service programs. The percentage reduction involved is so small that it will not be missed. But the Nation will certainly miss the health planning program if it is not reauthorized.

I urge enactment of this amendment.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WEICKER. Mr. President, will the Senator yield to me?

Mr. HATFIELD. I yield to the Senator from Connecticut 3 minutes.

Mr. WEICKER. My question to the distinguished Senator from Massachusetts is, Is this program authorized?

Mr. KENNEDY. The answer is no, it is not authorized, but it was authorized by a unanimous Labor Committee. It is on the calendar but there has been a hold on the measure and we have not been able to get it before the Senate.

Mr. WEICKER. I gather the answer of the Senator from Massachusetts is that it is not authorized.

No. 2, I think I should point out to my colleagues that the funds for this amendment—I find myself in a strange position of opposing both the Senator and the White House, who tried to do the same thing with the drug program as the Senator from Massachusetts is now trying to do for health planning, taking the money out of maternal and child health care, out of NIH, out of Alcohol, Drug Abuse, and Mental Health, and all the rest of the programs to fund an unauthorized program.

I think clearly, when we tried to craft the budget, consideration was given to the very meager funds allotted to this aspect of our national priorities. Quite frankly, as an unauthorized program, this had to wait its place in line.

I am sure the distinguished Senator from Oregon will have more to say about that later, but in any event, I think I should point out to my colleague that this money is coming out of direct help to those who are suffering from various afflictions and diseases that are treated in those very institutes from which the money comes.

Mr. KERRY. Mr. President, I wish to join my colleague from Massachusetts in supporting a 1-year extension for the health planning program.

I firmly believe that as the largest purchaser of health care, the Federal Government has a health planning role in the areas of cost control, access to adequate health care for all, health data collection, and the education and training for consumers, as well as business. Today's health planning agencies are the only existing vehicle's for bringing together consumers, providers of health care services and purchasers of health insurance, around issues that affect them all. They represent a broad spectrum of community interests with board members that include business people, physicians, elected officials, hospital administrators, nurses, and representatives of labor, insurance companies, and consumer groups.

Today's health planners have responded to past criticisms that they were too often concerned with cost and not concerned enough with ensuring quality and access to care. They have increased their activities to address access and quality of care issues, while also developing an impressive data collection service that responds to both State and local health needs. Although their strategies vary, they also are addressing problems like balancing the need for hospital services against the demands of an ever-growing elderly population for long-term care.

The Senate Labor and Human Resources Committee has already made a strong statement on this issue. On November 19, the Labor Committee reported favorably, without objection, S. 1855, the Health Planning and Resources Allocation Act of 1985. S. 1855 would extend the health planning program through fiscal year 1988, but unfortunately it has not been scheduled for floor consideration.

The authorizing committee has given its wholehearted support, now it is time to give the full Senate an opportunity to work its will on the continuation of health planning. I, therefore, urge my colleagues to support this amendment so that we will be better able to confront the health care challenges in the next Congress.

Mr. HEINZ. Mr. President, as a longtime supporter of health planning I regret that I cannot support the amendment of the Senator from Massachusetts. This amendment, which would redirect $29 million from the Public Health Service to fund Federal health planning for an additional 6 months, comes at too high a price. Federal health planning is a very valuable program, but I do not think that

this is the time or the legislation on which to resolve its status.

Since 1974, health planning agencies have helped to curb the distribution of expensive high-technology medical equipment in this country. America has picked up the pace in its discovery of sophisticated medical technology for the diagnosis and treatment of disease. Often with this growing diversity in the tools of modern medicine, comes the duplication of services and technology within communities. Health planning agencies have worked to ensure that our Federal investment in health care technology is used wisely, and with the best interests of local health care delivery at heart.

Unfortunately, this amendment would fund planning by reducing funds for biomedical research and the other important functions of the National Institutes of Health, and the Public Health Service. I simply cannot in good conscience support any cutback in NIH efforts to find cures for devastating health problems such as Alzheimer's disease, heart disease, osteoporosis, cancer, and the hundreds of other diseases that debilitate and destroy the health of Americans.

Mr. President, I would be willing to work with the Senator from Massachusetts to find another vehicle to ensure the continued viability of the Federal Health Planning Program.

Mr. GLENN. Mr. President, I would like to take this opportunity to explain my opposition to Senator KENNEDY's amendment to divert $29 million from the Public Health Service to fund the Health Planning Program for an additional 6 months. I have decided to oppose this amendment because $18 million of the $28 million transfer would be taken from the National Institutes of Health [NIH].

As a long-time supporter of both the Health Planning Program and important biomedical research taking place at the NIH, I find this vote to be very difficult. I am well aware of the value and successes of Federal health planning programs. I believe that providing individual States the opportunity to mold their health programs to fit the unique needs of their populations has proven to be very effective, particularly in my home State of Ohio.

Over the years, I have supported reauthorization of the Health Planning Program. Unfortunately, it has become painfully obvious that the majority of the Congress does not share my support and will not reauthorize health planning. Therefore, rather than extend the impending death of the program and strip the NIH of important biomedical research funding, I have reluctantly decided to vote against this amendment.

Mr. HATCH. Mr. President, will the Senator yield to me?

Mr. HATFIELD. I yield 1 minute.

Mr. HATCH. Mr. President, I think it would be useful for the Members of this body to hear a brief summary of efforts that have been made to reauthorize this program.

First, let me point out that the most recent authorization for the Federal Health Planning Program expired at the end of fiscal year 1982. Since that time the program has been funded under a continuing resolution despite the fact that it has not been authorized. I believe that outlays for a Federal program without appropriate authorizing legislation is an abdication of Congress' responsibility. When an authorization expires, Congress should evaluate the respective program and either give it renewed direction and funding or drop it from the books. This has not been done with the Federal Health Planning Program.

In November of last year, compromise bill S. 1855 to revise and reauthorize the health planning program was reported out of the Senate Labor and Human Resources Committee. In my view this bill was not perfect but it was a compromise I felt I could support under the circumstances that existed at that time. Those circumstances assumed House support for continuation of the Health Planning Program. However, since then the House of Representatives has voted by an overwhelming majority—the vote was 390 to 3—to sunset the program as of September 30, 1986.

Given the overwhelming interest in sunsetting the program demonstrated by the House and the administration's full support for their bill, I felt it made no sense to take S. 1855 to the floor.

Since that time, no other Senator has approached me about S. 1855 and expressed any interest in seeing this program reauthorized. I would also point out that in the report accompanying the fiscal year 1987 Labor/HHS appropriations bill, the Appropriations Committee stated that absent authorizing legislation, no funding for this program would be provided.

For this reason, I urge my colleagues to join me in tabling this amendment. Over the past 5 years, every opportunity has been present to reauthorize this program. Given Congress' refusal to do so, it is totally inappropriate to continue funding for an unauthorized program for yet another year, particularly given the fiscal constraints we are operating under. I hardly need remind my colleagues of the concerns Senator WEICKER and Senator HATFIELD expressed on Saturday night over our ability to pay for our Nation's urgently needed war on drugs. Given the urgency of that problem, I believe it makes little sense to continue funding for a program Congress has been unwilling to renew.

Mr. President, it is true this money has not been reauthorized since 1981. This bill was sunset by an overwhelming House vote in 1981. The White House supports that.

The distinguished Senator from Connecticut is exactly right: The fact of the matter is that there will be $18 million taken out of the NIH budget, something we fought hard for, several million taken out of the ADAMHA budget, from which we can barely afford to lose anything. It takes many millions from the nursing education, medical education, teenage pregnancy programs, and we could go on and on. A total of at least $29 million will be taken out of very, very important programs in order to fund something that literally has not been reauthorized.

I urge my colleagues to defeat this amendment because frankly, this is not the thing to do. We should have authorizing legislation. I think we would all consider not having authorizing legislation even if we wanted to, under the circumstances.

Mr. QUAYLE. Mr. President, will the manager yield?

Mr. HATCH. With that, I yield the floor to my distinguished colleague from Indiana.

Mr. HATFIELD. I yield the Senator from Indiana 1 minute.

Mr. QUAYLE. Mr. President, I rise in opposition to this amendment to add funds for the health planning program. Before we proceed on this matter, I think it would be useful for the Members of this body to hear a brief summary of efforts that have been made to reauthorize this program.

First, let me point out that the most recent authorization for the Federal Health Planning Program expired at the end of fiscal year 1982. Since that time the program has been funded under a continuing resolution despite the fact that it has not been reauthorized. I believe that outlays for a Federal program without appropriate authorizing legislation is an abdication of Congress' responsibility. When an authorization expires, Congress should evaluate the respective program and either give it renewed direction and funding or drop it from the books. This has not been done with the Federal Health Planning Program.

In November of last year, Mr. WEICKER and I worked together to develop a compromise bill, S. 1855, to reauthorize the Health Planning Program which we were successful in reporting out of the Senate Labor and Human Resources Committee. In my view this bill was not perfect but it was a compromise I felt I could support under the circumstances that existed at that time. Those circumstances assumed House support for continuation of the Health Planning Program. However, since then the House of Representatives has voted by an overwhelming majority—the vote

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I would also point out that in the report accompanying the fiscal year 1987 Labor/HHS appropriations bill, the Appropriations Committee stated that absent authorizing legislation, no funding for this program would be provided.

For these reason, I urge my colleagues to join me in opposing this amendment. Over the past 5 years, every opportunity has been present to reauthorize this program. Given Congress' refusal to do so, it is totally inappropriate to continue funding for an unauthorized program for yet another year, particularly given the fiscal constraints we are operating under.

Mr. President, the Senator from Massachusetts referred to a bill that passed unanimously in the Labor and Human Resources Committee. That bill is my bill and that of the Senator from Connecticut that did in fact pass. We are going to oppose the Kennedy amendment. The reason that bill has not been called up is primarily because the House of Representatives, on a vote of 390 to 3, eliminated the health planning system. If we vote to put this money back in, we are basically voting to put back money in a program that began and is still working on the problems of the 1960's. We are in the 1980's. This is going backward.

We have to go through a process and that is an authorization process and an appropriations process. The reason we do not have an authorization process here is that there has not been a consensus. I daresay, if we go and just appropriate money on an authorizing bill that has not been dealt with since the 1960's, not dealt with since 1982 specifically, we are doing the wrong thing. The time is up and if we are going to have a health planning system, we are going to have to get serious about it. This is certainly not the place.

The Senators made reference to our bill. I want to point out that it is our bill and we are opposing the Kennedy amendment.

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

The PRESIDING OFFICER. The Senator from Massachusetts has 2 minutes remaining.

Mr. KENNEDY. I point out to the Senator from Connecticut and to the others that this program has not been authorized since 1981 or 1982 and the Appropriations Committee has continued to fund it. The reason they funded that is because it saved billions of dollars in unnecessary and wasteful health expenditures. These pious arguments—that those who support this program are somehow less interested in NIH and child care—are baloney. If we abolish this program, we are going to see $6 billion of our health service dollars wasted next year. Let us hear how the members of the Appropriations Committee are going to come up with $6 billion more to pay for that waste and still maintain essential services.

You are going to have hundreds of millions of dollars out of NIH, out of drug care, out of community health centers and out of maternal and child health, $6.6 billion is this administration's estimate of the savings in this program—$6.6 billion.

Abolishing this program is pennywise and dollar foolish, Mr. President. I yield to no one in terms of supporting the various programs that have been outlined here, we are taking only three-tenths of 1 percent out of $9 billion in Public Health Service Program dollars. That is $29 million for 6 months to let the Senate of the United States decide whether to reauthorize this program or to sink it; $29 million to save $6 billion. That is the question.

Mr. President, I do not think I have any time left.

Mr. HATFIELD. Mr. President, I make a point of order under rule XVI, paragraph 1, that this amendment provides a new item of appropriations and therefore is not in order.

The PRESIDING OFFICER. The point of order has been made. The amendment provides a new item of appropriation not authorized, in violation of rule XVI, paragraph 1. The point of order is sustained.

Mr. KENNEDY. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

□ 1430

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Maryland [Mr. MATHIAS], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 75, nays 23, as follows:

[Rollcall Vote No. 326 Leg.]

YEAS—75

Abdnor	Bradley	Cochran
Andrews	Broyhill	Cohen
Armstrong	Bumpers	D'Amato
Bentsen	Burdick	Danforth
Boren	Byrd	DeConcini
Boschwitz	Chafee	Denton
Dixon	Helms	Proxmire
Dodd	Humphrey	Pryor
Dole	Inouye	Quayle
Domenici	Kassebaum	Roth
Durenberger	Kasten	Rudman
Evans	Laxalt	Sasser
Exon	Long	Simpson
Ford	Lugar	Specter
Glenn	Matsunaga	Stafford
Goldwater	Mattingly	Stennis
Gorton	McClure	Stevens
Gramm	McConnell	Symms
Grassley	Melcher	Thurmond
Hatch	Mitchell	Trible
Hatfield	Moynihan	Wallop
Hawkins	Murkowski	Warner
Hecht	Nickles	Weicker
Heflin	Packwood	Wilson
Heinz	Pressler	Zorinsky

NAYS—23

Baucus	Hart	Metzenbaum
Biden	Hollings	Nunn
Bingaman	Johnston	Pell
Chiles	Kennedy	Riegle
Cranston	Kerry	Rockefeller
Eagleton	Lautenberg	Sarbanes
Gore	Leahy	Simon
Harkin	Levin	

NOT VOTING—2

Garn	Mathias

□ 1450

The PRESIDING OFFICER. The yeas are 75. The nays are 23. The decision of the Chair stands as the judgment of the Senate.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that we temporarily lay aside the pending motion to reconsider and that we turn to the Bumpers amendment on the National Endowment for Democracy under a time limit of 5 minutes, a total of 2½ minutes per side.

Mr. DOLE. Mr. President, let me indicate to my colleagues we are going to start shutting off the votes around here at 15 minutes. The last vote we held an additional 8 minutes and the one before that about 8 minutes.

For a number of our Members I think we ought to make a special effort so they can leave here at a reasonable hour.

I hope my colleagues will come to the floor at the sound of the first bell so we can wrap this up in the next hour and a half.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

The Senator from Arkansas.

AMENDMENT NO. 3195

(Purpose: To eliminate funding for the National Endowment for Democracy)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3195.

Mr. BUMPERS. 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, insert the following:

"SEC. . Notwithstanding any other provision of this act, no funds shall be available for grants made by the United States Information Agency to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act.

Mr. BUMPERS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, this amendment is very simple. It will reduce the deficit by $15 million. Nobody will ever know the difference except we will have saved $15 million.

What the amendment does is take away $15 million that has been appropriated for the National Endowment for Democracy.

This organization sets its own agenda. NED does little to monitor and evaluate its own programs, and taxpayers never really know if funds appropriated to NED are properly used and accounted for.

NED essentially doles money out to the AFL-CIO, the chamber of commerce, and the Democratic and Republican Parties, and they turn around and give the money to their favorite organizations in countries all across the world. We see no tangible results from hundreds of the funded projects, and some of the projects do more to undermine democracy than to promote it. I heartily applaud NED's assistance to La Prensa, but that same assistance could be offered through other Government agencies and we could save millions of dollars wasted by the NED bureaucracy.

If you read the 1984 GAO report on NED or the May 1986 testimony on NED's administration of its grant program presented by GAO, you will be appalled and you will vote for this amendment.

I want to remind you again of who gets the money. Believe it or not, this money goes to the Democratic Party, the Republican Party, the AFL-CIO, and the chamber of commerce.

There is no coordination between them. There is no coordination as to whether two or three groups are giving grants to organizations in Nicaragua or Argentina or France, or whether they're giving grants to competing organizations in a country.

In one instance NED gave money to an organization trying to overthrow the Mitterrand government in France. How do you think we would feel if Mitterand sent money to this country to a group to help overthrow the U.S. Government?

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

Mr. BUMPERS. Mr. President, I want to save my last 30 seconds.

The PRESIDING OFFICER. Who yields time?

Mr. RUDMAN. Mr. President, how much time is remaining to the Senator from Arkansas?

The PRESIDING OFFICER. Thirty seconds to the Senator from Arkansas; 1 minutes 24 seconds to your side.

Mr. RUDMAN. I thank the Chair.

Mr. President, a year ago I might have supported this amendment. The fact is that the National Endowment for Democracy has made great strides in what it is doing. It is supported by many groups in this country of every political stripe. The National Endowment for Democracy in my view, has its most effective program through the Free Trade Union Institute of the AFL-CIO, working with labor movements around the world, it works to assure they are free from Communist influence. They support the best democratic principles of the American labor movement.

In addition, dissidents in countries like Afghanistan, Poland, and South Africa have been heavily supported by the NED.

It is interesting to note that 1 year ago I was on the same side of this issue as the Senator from Arkansas. I have come to the conclusion that I was wrong.

I think the recommendation of the Senator from Arkansas is ill advised today and I would point this out. There is one thing he said I do agree with.

I agree that the national political parties ought to get nothing from this endowment. I submitted that amendment last year, and I lost predominantly because that side of the aisle did not supply any votes to help me with my amendment.

Mr. GRASSLEY. Mr. President, I would like to take this opportunity to rise in support of the National Endowment for Democracy.

I must admit that when the endowment was first established, I was not its biggest fan, however, since that time I have had a chance to experience the NED's work first hand and have become a strong supporter.

Before the National Endowment for Democracy was created, the United States was limited in its ability to help promote democracy, for the Government is simply not the appropriate instrument for aiding private groups abroad. I have seen the endowment fill a real need, a fact that is best attested to by those at the cutting edge of democratic change who need our support. The inescapable reality of nuclear stalemate enhances the importance of political competition and underlines the need for an institution like the endowment.

The question of the endowment's existence is not only a question of resources—which are, of course, indispensable to its activities—but also a question of the open commitment of the American people to the cause of freedom and democracy in the world. To abandon the field of political competition to our adversaries would do more than harm our national interests, it would send the wrong signal to democrats around the world who have been greatly encouraged by the establishment of the endowment.

In addition, the endowment represents an important new means by which the United States can influence opinion around the world on behalf of democracy. Ideas have taken on a special importance with the worldwide communications revolution. We must be engaged in the effort to influence and persuade—our opponents already are. If we succeed with persuasion, we will find it less necessary to resort to force to defend basic democratic values.

The endowment's efforts to this end deserve to be strengthened and supported. Its programs are clearly giving valuable assistance to groups struggling for freedom and democracy around the world. The endowment has demonstrated that it is capable of finding creative ways to do so, even under the most difficult of circumstances. For example, one such group the endowment has supported is the International Parliamentary Group for Human Rights in the Soviet Union (IPG).

The IPG is a planning and coordinating body of 700 parliamentarians in the United States, including 80 Senators, Canada, Western Europe, and other countries who are committed to increasing public awareness of the human rights situation in the U.S.S.R. The purpose of IPG is to establish a multinational system to monitor Soviet human rights performance and respond immediately to human rights abuses.

The Vienna Review Conference on Security and Cooperation in Europe is rapidly approaching and the IPG will be playing a prominent role in ensuring that our members' views are communicated to the delegates at that conference.

NED helps in that effort. It responds to urgent appeals from valiant democrats who are struggling for freedom against authoritarian and totalitarian governments.

These Democrats know the risks involved in asking for and receiving such support. We should support them in their moment of need and not destroy the one means we have to give them concrete assistance. NED deserves the full support of the U.S. Congress.

IN SUPPORT OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Mr. RIEGLE. Mr. President, 2 years ago during Senate debate over funding for the National Endowment for Democracy, I argued that with proper

guidance and oversight, the Endowment could greatly enhance the understanding and appreciation of democratic systems and values around the globe.

I believe that today, after 3 years in existence, this program continues to deserve our support.

I therefore oppose the pending amendment to strike funding for the NED. While I support the worthwhile activities of the Fulbright-Hays scholarship program, I do not believe the the National Endowment should be gutted in order to increase the Fulbright budget by 10 percent.

NED was created out of the realization that our Nation wasn't doing enough to encourage and promote democratic institutions abroad. Since 1983, programs sponsored by the Endowment have encouraged free and democratic institutions throughout the world.

In Poland, NED is assisting the outlawed free trade union movement, Solidarity, and is monitoring and disseminating information on the status of human rights and workers' rights in that country. The Endowment is the only U.S. agency supporting exiled families of jailed Solidarity activists.

In South Africa, NED helped South Africa's unions focus the public spotlight on the evils of apartheid and the repression of the workers by the white minority government there.

In Latin America, NED has helped fund La Prensa, Nicaragua's anti-Sandinista newspaper.

To the fledgling democracies of Haiti, Guatemala, and Grenada, the Endowment is a main source of voter education and political training.

In Chile, NED has 15 programs helping various groups pave the way back toward democracy.

In Asia, NED is helping the anti-Soviet resistance in Afghanistan reestablish schools, and print textbooks.

In the Philippines, NED supported the successful democratic elections and transition.

In Northern Ireland, NED is helping moderate political forces find a peaceful, democratic solution to the ongoing communal conflict.

In a recent letter to me, Aloysius Mazewski, president of the Polish American Congress, Inc., commented on the Endowment's activities in Poland:

> The Endowment became the only source of financial support for the nonviolent massive opposition movement Solidarity in Poland. Particularly important is the NED assistance to independent cultural and educational activities of underground Solidarity, such as: flying university, publishing houses, lending libraries, uncensored press and similar programs, which flourish in today's Poland in spite of arrests and persecutions.
>
> Elimination of NED would deal a fatal blow to this nonviolent democratic resistance movement. It would be a tragedy if Solidarity, which survived 5 years of repressive measures of a police state, should die as a result of action taken by the U.S. Congress.

Commenting on another Endowment program operating in Asia, Sam Fishman, president of the Michigan State AFL-CIO, wrote of his recent trip to Korea and the Philippines, which he took at the invitation of the AFL-CIO's Asian-American Free Labor Institute [AAFLI]:

> AAFLI is the foreign service arm of the American labor movement. In each country, we visited AAFLI projects, met with trade union leaders and government officials, and held discussions with the U.S. Ambassador.
>
> Each member of the team was impressed by the quality of AAFLI's work and by the high regard in which the institute and its representatives are held, by both trade unionists and the top officials of the U.S. Embassies. Independent, democratic trade union movements are crucial components in any truly pluralistic society. The work of AAFLI and the other institutes of the AFL-CIO in Europe, Latin America, and Africa certainly plays an important role in the protection of democracy in the world today.
>
> Unfortunately, that work is threatened today by cuts in foreign assistance, and more particularly, by the continuing efforts of some in Congress to destroy the National Endowment for Democracy, which provides funding to AAFLI through the AFL-CIO's Free Trade Union Institute.
>
> One result of these attacks has been a 70-percent reduction in AAFLI's Philippine program, which funds programs in support of the Independent Trade Union Congress of the Philippines [TUCP]. The TUCP's work during the recent elections in support of free and fair electoral process, both independently and through the National Movement for Free Elections [NAMFREL], was second only to the Roman Catholic Church in its scope and effectiveness. Its innovative programs for workers—both union and nonunion members—have won praise in the Philippines and are widely imitated.
>
> It is impossible to describe in a letter such as this the courage and dedication of these men and women of the TUCP. As a trade unionist and an American, I am proud that the AFL-CIO has been able to provide vital assistance to them at this time of crisis in the Philippines. It would be a tragedy, indeed, if this support could not continue.

Mr. President, no one would argue that NED has been problem-free. However, its board of directors has taken corrective measures to ensure thorough monitoring of the endowment's activities. The overt nature of the National Endowment, and its required compliance with the Freedom of Information Act means that all of its programs are subject to necessary and important public scrutiny.

Over the past 5 years, we have invested over $1 trillion to build up our defense capability. While we must maintain a strong defense, we must not ignore the other efforts underway which advance our national security interests—such as the low-level, relatively inexpensive programs promoted by the Endowment.

Today there is a growing need to counter antidemocratic propaganda around the world. According to news accounts, the CIA estimates that the Soviet Union spends between $60 and $80 million a year on efforts to promote its ideological line overtly, and $50 million more covertly aiding Communist parties around the world. This investment is in addition to the activities of the KGB, Soviet satellite governments and all the official organs of East bloc propaganda, diplomacy, and cultural exchange.

An editorial in the October 6, 1986, edition of the New Republic argued that:

> Some agency needs to give immediate help to fledgling democratic movements, and the job shouldn't be left to the CIA.

I agree, and urge my colleagues to support the efforts of the National Endowment for Democracy by defeating this amendment.

Mr. KENNEDY. Mr. President, I rise in opposition to this amendment. The Senate has already voted down this amendment last December by a vote of 57 to 32 and I urge my colleagues to once again vote to defeat it.

The concept of the National Endowment for Democracy was articulated 40 years ago by Franklin D. Roosevelt's intimate adviser, Harry Hopkins, who argued that our country "should not be diffident and apologetic and unimaginative about promoting the democratic process througout the world." Yet of all the Western democracies, the United States was among the last to share its political heritage with the underdeveloped and developing nations.

I have followed closely the work of the National Democratic Institute, one of the four "core grantees" of the Endowment. It has played a major role in providing practical assistance to democratic parties and institutions in Chile, Haiti, South Korea, Ireland, Argentina, and Brazil. NDI's role this year in organizing the international observer team to the Philippine election alone is a sound reason to continue the National Endowment for Democracy.

These are not wasteful programs. Foreign leaders, State Department officials, Members of Congress, and those parties leaders who have requested and received assistance can all attest to the accomplishments of NDI's nonpartisan work.

I am personally familiar with one of NDI's most successful programs. In Northern Ireland, the National Democratic Institute has developed an ongoing program to strengthen the democratic process as envisioned by the recent Anglo-Irish accord. By providing technical assistance to the social democratic and labor party, NDI has helped the SDLP establish a viable alternative to extremism and terrorism. I am extremely impressed with its professionalism and its commitment to end the violence and terrorism and

bring peace and justice to that troubled part of Ireland. NDI has become an integral part of the endowment. Their work should be expanded, not eliminated.

Mr. President, if we allow this amendment to pass, we will be making a grave mistake. It would be a decision we will come to regret in the months and years ahead. Our inactivity in the field of democratic development will only create a vacuum that our adversaries will surely seek to fill. I am grateful for the work of the Endowment and the National Democratic Institute. It has served the highest interests of this country—an abiding respect for human dignity and human freedom. It was Franklin Roosevelt who, in a fireside chat, called upon the United States to be the "great arsenal of democracy." I urge my colleagues to support this noble endeavor and reject this amendment.

Mr. PELL. Mr. President I oppose this amendment.

The National Endowment for Democracy is a new program. It is an experiment. Like any experiment, it has had some rough periods. For example, I find it totally unacceptable that NED should have supported opposition groups in France, an established democracy and NATO ally. I am, however, confident that the NED board under the leadership of John Richardson and Carl Gershman—two sincere and very thoughtful men—will make sure that these mistakes are not repeated.

The National Endowment for Democracy is doing innovative and constructive work. In Poland, NED has helped sustain the spirit of Solidarity. In South Africa, it is working on behalf of democracy and majority rule in that troubled land. In Chile, the National Endowment for Democracy is working with the opposition parties—at their request—to help replace the Pinochet dictatorship with a democratic government. It would be a tragedy to drop this effort.

I would particularly like to commend the work of the National Democratic Institute for International Affairs. Under the leadership of Brian Atwood, NDI is playing a key role in the process of reconciliation in Northern Ireland. NDI has developed a close relationship with the SDLP, the democratic alternative to the IRA in the Province's Catholic community. By helping the SDLP enhance its organizational and political skills, NDI is strengthening the one element that can effectively work to negotiate a settlement in that troubled province. NDI and its republican counterpart played a very useful role as election observers in the Philippines and thus helped insure that Ferdinand Marcos did not get away with stealing the elections. NDI is now working with Argentina's Congress and will soon undertake a study mission to Pakistan.

I believe the NED experiment is producing results and should be continued.

Mr. BRADLEY. Mr. President, I would like to speak in strong support of the National Endowment for Democracy—a private agency dedicated to promoting democratic movements throughout the world. The Endowment works in practical, grassroot ways to strengthen democratic institutions and build pluralistic political systems.

When the Endowment was established in 1983, I was among those who were skeptical about its utility. But since then, to its credit, it has demonstrated true seriousness of purpose. Its track record has grown more impressive every year.

The Endowment has worked for democratic elections in the Philippines through sponsoring observer groups to monitor the fairness of elections.

It has supported moderate political forces seeking a peaceful, negotiated solution to the conflict in Northern Ireland.

It has funded a project for Afghan resistance to teach new generations of Afghan children who are under Soviet occupation. It is helping Afghans help themselves by reestablishing schools, printing textbooks, and training Afghans to use minicameras so that they can provide more vivid and compelling images of the terrible war that is ravaging the Afghan people and which has already claimed over 1 million Afghan lives.

It has supported democratic opponents of apartheid in South Africa, by funding programs in legal aid, squatter resettlement and education which seek to eliminate apartheid peacefully rather than through violence.

It has provided legal assistance to jailed Solidarity activists and support services for Poland.

In Haiti, it supports those seeking to consolidate democracy through voter education and political training programs.

The list could go on.

The National Endowment for Democracy is an important way to keep America actively engaged in spreading democratic values. It is a key complement to government-to-government programs on the one hand, and international exchange programs for individuals on the other. The Endowment focuses on the private organizations that enable individuals to join forces to promote pluralistic political systems. The programs and projects it supports can make a difference now, as well as build for the future.

But there is more at stake here than ideas. American workers have a direct and immediate interest in seeing democratic institutions flourish in the Third World. Stable democratic governments attract the investment that is essential for growth. Growth in developing countries means larger markets for American goods and services. Growing markets mean more jobs for U.S. workers. Democratic institutions also help prevent exploitation of local labor forces. This means improved conditions and higher wages for Third World workers. It also lessens the problem of foreign competitors undercutting our markets because they can get away with outrageously low wages. So we have a real interest in supporting the Endowment's activities in these areas.

We must also be realistic about the extent to which our adversaries exploit ideology for political ends. By supporting programs to strengthen democratic values and institutions around the world, we will be promoting our strategic interests as well as our ideals.

The Endowment has bipartisan support. Its track record demonstrates that its commitment to democracy is across the board, without double standards and that it is involved in practical programs. Supporting the National Endowment offers us an opportunity to make our support for democracy concrete. I urge you to join me in voting against eliminating the National Endowment for Democracy.

Mr. EAGLETON. Mr. President, I strongly oppose the Bumpers amendment.

This amendment will obliterate the fledgling National Endowment for Democracy. It is, Mr. President, an extraordinarily shortsighted amendment.

In the less than 3 short years since the birth of the National Endowment for Democracy, it has created an impressive record.

In the Philippines, the Endowment's Free Trade Union Institute provided massive assistance to rural and urban democratic unions against the combined assaults of the antidemocratic right and left; the Endowment's two party institutes sponsored a major international observer delegation which contributed to assuring respect for the Filipino people's will during the recent Presidential elections.

In Northern Ireland, the Endowment's National Democratic Institute for International Affairs, working with the Social Democratic and Labour Party of Northern Ireland, has developed a program to strengthen the SDLP by helping it create an institute for party-building and education development activities.

In Poland, the National Endowment for Democracy is providing aid to Solidarity and for a wide range of independent intellectual and cultural activities.

In Nicaragua, timely endowment assistance has enabled La Prensa, that

country's only independent newspaper, to survive.

In South Africa, the endowment is giving support to lawyers working for human rights and for the peaceful dismantling of apartheid.

In Haiti, the Endowment for Democracy has given support to an emerging free trade union movement and for the establishment of a center to promote research, civic education, and democratic cooperation for the consolidation of Haiti's democracy in the post-Duvalier era.

What better tool in public diplomacy than providing financial and moral support to proponents of freedom and democracy around the world? That is precisely what the National Endowment for Democracy does in Guatemala, Granada, Panama, Nicaragua, the Dominican Republic, Chile, Argentina, Peru, Poland, Northern Ireland, Portugal, Afghanistan, the Philippines, China, South Africa, Southern Africa, and a host of other countries around the world.

The National Endowment for Democracy embodies the U.S. commitment to democracy to leaders and future leaders in every corner of the globe. Having achieved a remarkable degree of success in making new friends for the United States and for the democratic process, we must not now eliminate the opportunity to strengthen those relationships and foster new ones among the people of the world community who are struggling to keep freedom and democracy alive.

I urge my colleagues to vote against the Bumpers amendment.

Mr. MOYNIHAN. Mr. President, never has the case for continuing funding for the National Endowment for Democracy been stronger. In the Philippines, Haiti, Northern Ireland, and elsewhere around the world, important progress is being made in fostering democracy—progress that must continue.

In each of these countries, the National Endowment for Democracy is working to fulfill the mandate given to it on November 1983, when Congress passed the enabling law for the Endowment (Public Law 97-164).

As stated in that law, the purpose of the Endowment is to—

> Encourage free and democratic institutions throughout the world • • • to encourage the establishment and growth of democratic development in a manner consistent both with the broader concerns of the United States national interests and with the specific requirements of the democratic groups in other countries.

The program, although created only 3 years ago, is not new to the American spirit. Indeed, it derives from the American spirit. The Endowment builds on a model well-established by the American labor movement.

Since its organization in 1881, the Federation of Organized Trade and Labor Unions, predecessor to the AFL-CIO, has been devoted to the enhancement of human rights and democratic liberties in other countries.

The first convention in 1881 called attention to what it considered to be the unjust imprisonment of

> Hundreds of Ireland's honest spirits • • • in consequence of their heroic attempts to ameliorate the condition of her oppressed people.

The resolution resolved to:

> Extend to these champions battling in the cause of human Liberty our hearty sympathy, and that we also extend to the oppressed of all nations struggling for liberty and right, the same encouragement and words of sympathy.

In 1918, Samuel Gompers, at the request of Woodrow Wilson, chaired the commission which founded the International Labor Organization—reflecting the interest of American workers in promoting worker's rights and democracy abroad.

In the aftermath of World War II, the American labor movement did much to promote such rights and liberties in Europe, rebuilding German trade unions and fighting to keep Communists from seizing power in France and Italy. And since that time, the labor movement has continued striving to build democracy abroad. In El Salvador, for example, three representatives of the AFL-CIO were the first Americans to have died during the last 10 years—working to strengthen free trade unions and democratic rights.

The Endowment also draws upon the experience and commitment of the chamber of commerce to promoting American principles abroad.

Moreover, the Endowment capitalizes on the strengths of our country's political parties. The Democratic Party is the oldest existing political party in the world. And together, the Democratic and Republican Parties possess vast experience in making democracy work, experience that nascent democracies abroad can draw upon in building their own institutions.

As I stated on March 29, 1985:

> If we think elections are a good and responsible thing, and that parties can be instrumental for the articulation of responsible opposition programs and oversight of sitting governments, then ought we not permit—encourage—our parties to work with parties in countries where they are not as well established?

The National Endowment for Democracy has already done much to promote such democratic principles and institutions, in a very few years and with exceedingly modest resources. Democracy takes root slowly. No democracy in existence today was created in 3 years; it took decades for the democratic system in Western Europe to evolve into what they are today.

Yet in just 3 years, the Endowment has already begun to reveal what can be done to build democracy around the world. In Latin America, programs supported by the Endowment serve as the main source of voter education and political training in the nascent democracies of Grenada, Haiti, and Guatemala. The Endowment helped fund La Prensa, the opposition newspaper in Nicaragua, and is supporting that country's embattled democratic union federations. Free trade unions in Chile, Bolivia, Colombia, and other Latin American countries also benefit from programs supported by Endowment funding.

The Endowment has been particularly active in the Philippines. The Endowment provided funding for the international group that monitored the 1986 Presidential election, and for logistical support for more than 10,000 local poll watchers. Endowment resources are also supporting programs for organizing rural cooperatives, trade union education, and health care. And the Endowment is active elsewhere in Asia, including Afghanistan, where it is assisting the Afghan resistance movement in rebuilding schools and printing textbooks.

In Africa, the Endowment is supporting lawyers working for human rights and for the peaceful dismantling of apartheid. The Endowment is also providing funds for education, squatter resettlement and democratic organizing programs.

The Endowment conducts programs in Eastern Europe as well. The Endowment has provided legal assistance to jailed Solidarity activists in Poland and support for their families. Endowment funds also support magazines promoting democracy in Hungary, Czechoslovakia, and Poland.

And in Northern Ireland, Endowment funds are being used to bolster democracy in ways that could assist the search for a just and lasting peace in that troubled land. Since January 1985, the National Democratic Institute has worked with the Social Democratic and Labor Party [SDLP] to develop a program to strengthen the party's capacity to contribute to democratic development in Northern Ireland.

Mr. President, to eliminate funding for the National Endowment for Democracy in the midst of such progress would be a grave error. Events in the Philippines, in Haiti, in Latin America, and elsewhere suggest an encouraging trend toward democracy in the world. These trends ought not be ignored. To reverse ourselves after such a short period of time will make people wonder whether we truly are committed to fostering democratic institutions in the world.

Mr. DURENBERGER. Mr. President, I rise to oppose the Bumper's amendment to transfer the National Endowment for Democracy's appropriation to the Fulbright Scholarship Program. I think this effort is well-intentioned, but it is wrong-headed. I believe that abolishing the NED would send precisely the wrong message to both our democratic friends throughout the world as well as to both our authoritarian totalitorian and adversaries. I am increasingly convinced that the efforts of the NED and its institutes for labor, business, and the political parties are beginning to show positive results in countries as diverse as Haiti, Chile, Afghanistan, Poland, and the Philippines.

Through the investment of a comparatively small amount, this Nation can potentially reap substantial dividends through the extension of the international democratic revolution. I believe that the Endowment represents an important new means by which the United States can influence opinion around the world on behalf of democracy. Ideas have taken on a special importance with the worldwide communications revolution. We must be engaged in the effort to influence and persuade others of the merits of democracy—our adversaries have financed vast programs to establish and entrench dictatorial regimes and will undoubtedly continue to do so in the future. If we and other democratic allies succeed with persuasion, we will find it less necessary to resort to force to defend basic democratic values.

There is much evidence in recent political history to support this view. Perhaps most striking is the surge of democracy in the Americas in the past 10 years. It is indeed heartening to see the development and the expansion of democracy in such diverse countries as Argentina, Haiti, Guatemala, Peru, and Uruguay. Equally, we must recognize that democracy remains fragile in many of the countries of this hemisphere due to economic and political instability. U.S. policies must reflect a greater sensitivity to the vulnerabilities of these newly democratized societies. At the same time, we can and should do more, in concert with our democratic allies in Europe and Latin America, to assist like-minded trade unionists, politicians, businessmen, youth and women's leaders, educators, human rights activists, and journalists. Support for democratic leaders struggling against dictatorships of the left and of the right strengthens this Nation's claim as the world's premier advocate of freedom and democracy.

The policy failures of the past 25 years in Vietnam, Iran, and Nicaragua teach us many lessons. One of them is the need to avoid the unpalatable choice between a military regime and a Communist-oriented insurgency. Perhaps if this Nation had done more to encourage democratic elements in those three now-hostile societies, a popular and democratic alternative might have developed to Somoza and the Sandinistas in Nicaragua, to the Shah and Khomeini in Iran, and to Thieu and the Communists in Vietnam.

One increasingly important case in point is the developing situation in Chile. The Reagan administration and many Members of Congress, including this Senator, view the struggle between Gen. Augusto Pinochet and the well-armed and well-financed guerrillas of the Communist Manuel Rodriguez Patriotic Front [FPMR] with growing concern. Unlike the crises in Vietnam, Nicaragua, and Iran, there is a democratic alternative in Chile. It is called the "National Accord for a Transition to Full Democracy" and reflects the diverse perspectives of democratic thought and action within Chile—Christian democrats, conservatives, liberals, and democratic socialists, businessmen, trade unionists, and journalists. These are the men and women within Chile who share the democratic perspective of their neighbors in Argentina, Uruguay, Venezuela, Costa Rica, and the United States. These are the groups and the individuals whom we should support.

I am pleased to report that the endowment and its institutes are working with a wide spectrum of democratic organizations in Chile in a concerted, bipartisan program that respects Chilean sensitivities about foreign intervention. For example, the endowment is providing support to three major academic institutes which reflect the major democratic political tendencies within Chile. These institutes will be responsible for developing a joint political and economic program to continue the work of the national accord. Assistance is being given for leadership training and education to the Central Democratico de Trabajadores [CDT], Chile's embattled democratic trade union federation. Other initiatives are aimed at rebuilding Chile's democratic cooperative movement, educating youth leaders in democratic values, publishing books and articles by Chilean democratic leaders, and training political leaders in party organization and development.

The Endowment is a new and relatively small organization, yet its work is meeting with success in Eastern Europe, Afghanistan, Latin America, Africa, and the Far East. I therefore strongly urge the rejection of the Bumpers' amendment.

Mr. President, I ask unanimous consent that two articles of the future of democracy, one by Morton Kondracke and the other by Jean-Francois Lisee, be printed in the RECORD.

[From the New York Times, Sept. 22, 1986]

DON'T SELL DEMOCRACY SHORT

(By Morton Kondracke)

WASHINGTON.—There will be an effort in the Senate this week to kill off the National Endowment for Democracy, the private agency that administers this country's modest efforts to promote democratic movements around the world. This should not be allowed to happen.

The effort comes at a time when, according to Central Intelligence Agency estimates, the Soviet Union spends between $60 million and $80 million a year on 13 worldwide front groups that promote its ideological line and $50 million more covertly aiding Communist parties around the world. This is all separate from the activities of the K.G.B., Soviet satellite governments and all the official organs of East bloc propaganda, diplomacy and cultural exchange.

The most active nation on our side is West Germany, which gives $210 million a year to its four political party foundations, which help parties around the world that share their Christian Democrat, Socialist, conservative or liberal world view. The foundations also help trade unions, newspapers, voter education projects and other nonpartisan democratic movements, some of them under attack from totalitarian governments of the left and right.

Shouldn't we do the same? From the 1940's to the early 60's we did so covertly through the C.I.A., causing great embarrassment to recipients when the funding was exposed in the post-Vietnam era. The United States resumed help for democratic movements only three years ago, but even now we devote only $15 million a year to the cause.

With these funds, the National Endowment for Democracy is undertaking fascinating experiments in democracy-building and doing so openly. In Asia, N.E.D. is helping the anti-Soviet resistance in Afghanistan re-establish schools, print textbooks and train people to use minicameras to give the world a video record of the war. It funded the international group that monitored the Philippine elections. It finances a Chinese-language newspaper that provides a forum on issues of democracy and economics for mainland Chinese and Taiwanese students in the United States and Canada. And it gives training in democratic theory and practice in South Korea, Turkey and India.

In Latin America, N.E.D. has helped fund La Prensa, Nicaragua's anti-Sandinista newspaper, and serves as the main source of voter education and political training in the fledging democracies of Haiti, Guatemala and Grenada. It has 15 programs in Chile, helping various groups pave the way back toward democracy.

In Africa, the National Endowment has approved eight new legal aid, squatter resettlement, education and democratic organizing programs in South Africa, and has union, women's and youth projects going in Zimbabwe, Senegal, Gambia, Botswana and French-speaking nations.

In Eastern Europe, N.E.D. has provided legal assistance to jailed Solidarity activists in Poland and support services for their families. It helps publish magazines promoting democracy in Poland, Czechoslovakia and Hungary, and is preparing videotaped discussions on democracy for distribution in the Soviet Union.

Out of some 260 projects over the past three years, three have become controversial: aid to a pro-military political party in

Panama, funding of a conservative student youth group in France and backing for a United States group that lobbied for aid to the contras in Nicaragua. On inspection, only the Panamanian intervention seems to have been truly unacceptable, and that led to tighter internal controls.

Some liberals say that the N.E.D. is too Reaganite (for aiding critics of the Sandinistas). Some conservatives think it's mischievous for backing democrats in South Africa, South Korea and Chile. Others believe we have no business getting involved in any country's internal affairs.

This week, Senator Dale Bumpers, Democrat of Arkansas, will move to transfer the National Endowment's appropriation to the Fulbright scholarship program in the belief that having foreigners visit our country is a better way to foster democracy than sending money abroad. But the $15 million will add only 10 percent more to the Fulbright budget and will wipe out the Endowment. We will then have no agency helping struggling democrats around the world—unless, of course, we want to bring back the C.I.A.

[From the New York Times, Sept. 26, 1986]

REAGAN'S HISTORIC OPPORTUNITY

(By Jean-Francois Lisée)

WASHINGTON.—President Reagan is worried about his place in history. He has one eye on Geneva and another on Managua as places where he might leave his mark, but he and his advisers are missing an angle—an important opportunity to propel his reputation into the next millennium.

The angle sweeps from Santiago, Chile, to the capitals of Western Europe. It is an opening that could give the West a dramatic ideological edge and do more to hurt Communism than a million contras or other "freedom fighters."

Part of the new opportunity lies in Western Europe. The rupture, in early 1984, of the French "Union de la Gauche" ended a century of cooperation between the democratic left and its totalitarian cousins—in this case, between the socialists and the Communist Party. Similar changes have taken place on the left in Spain and Portugal and may soon be repeated in England and Italy. This means that a large and active segment of the Western European "democratic left" simply will no longer compromise its democratic beliefs. It is also increasingly interested in finding new allies on the international scene.

Europeans do not, however, see much that recommends itself in President Reagan's foreign policies. True, America played a role in ousting dictators from the Philippines and Haiti, but Washington's conduct in both cases looked like so much damage control. From Europe, Grenada looked like a standard imperialist crackdown, and the promotion of democracy in El Salvador still seems tactically motivated. To many Europeans, it seems that Washington is still pursuing the same old policy toward the third world, no matter what the local dictator looks like.

Mr. Reagan has been sitting on this fence for some time now, apparently unaware that the makings of a political realignment lie waiting in Europe. He ought to see that Europeans are ripe for a signal from Washington.

Gen. Augusto Pinochet is the most brutal dictator the Americas have had in a long time. Washington surely had a hand in helping install him in 1973—and that, together with the general's 13 years of repressive rule, has given Moscow one of its best propaganda tools. The State Department is well aware of this. A former Assistant Secretary of State for Inter-American Affairs, Langhorne A. Motley, said of his meeting with General Pinochet in February 1985: "I told him that if he were writing the script for the Communists, he couldn't write it better than he was doing." The situation in Chile today offers an opportunity to take that script away from the Communists.

How? Options are few. Not only is the general willing to extend his control of the country—personally or by proxy—to the turn of the century, but many observers say that he would be able to do so, thanks to a divided, if vocal, opposition. The Reagan Administration is increasingly annoyed by the dictator's brutality, and it has dug into its bag of pressure tactics. But the Chilean economy has not proved quite weak enough, or the army quite divided enough, and it is unlikely the United States will get the general to leave voluntarily.

Yet surely there are other possibilities. The United States has been propping up General Pinochet for 13 years. Why not now remove some of those props? The Reagan Administration could make it known that it would not oppose his replacement by a pro-American military junta. Such a transitional government would be expected to bar local Marxist parties from running in the first election, giving the democratic right and left time to gain precious ground.

With such steps, the United States would clearly implicate itself in the removal of another dictator in its own backyard. This would also put other Reagan initiatives in a new light: Grenada, the Philippines, Haiti and El Salvador would appear to be so many dominoes falling on the way to Santiago. And it would lay the foundations for a new alliance between Western European and American opinion.

The surge of Marxism—and its attraction for democrats, particularly in Europe—has been the major ideological event of this century. President Reagan has the opportunity to bring this chapter to an end and open a new one, while insuring that his name gets good play in the history books.

Mr. HATFIELD. Mr. President, I yield 1½ minutes to the Senator from Utah.

Mr. HATCH. Mr. President, year after year with the hundreds of programs that work for the National Endowment for Democracy we have to fight this battle every year.

Let me mention one program. Senator RUDMAN is right. He mentioned a number of programs. In South Africa the Free Trade Movement Program has benefited; the enterprise system has benefited in Afghanistan; in Poland Solidarity was aided indirectly. I could go on and on.

Let me mention one program. Because of this National Endowment for Democracy, Armando Valadares, 22 years a political prisoner in Cuba, wrote a book, "Against All Hope." It is transforming the whole world's understanding of the difference between true effective democracy and what is happening in Cuba because of the oppressions of political prisoners down in Cuba.

The whole world has come to the attention of Armando Valadares' book, and it is one of the smaller projects.

It is not just La Prensa or the free press throughout the world. It is all kinds of programs that are working.

We spend $18 million to counteract $3 billion in disinformation that the Russians are spreading over the world.

With $18 million we are kicking the living daylights out of them all over the world and it is time this body starts to realize that.

□ 1500

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

Mr. BUMPERS. Mr. President, has all time for the opponents expired?

The PRESIDING OFFICER. Yes.

The Senator from Arkansas has 30 seconds.

Mr. BUMPERS. Mr. President, I want to point out that there are a number of existing agencies that can support the few worthwhile projects financed by NED. And we can certainly do without a bureaucracy that funds an organization that tried to prop up the Marcos regime.

Do you know how they divided that money between those four organizations? They sit around a table and decide "You take $5 million, you get $3 million." They decide for themselves.

I wish I had time to offer a backup amendment. It would be to throw this $15 million off the top of the Washington Monument. We could at least draw a crowd of poor people and somebody would get some benefit from it.

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

Mr. HATFIELD. Mr. President, I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon [Mr. HATFIELD] to table the amendment of the Senator from Arkansas [Mr. BUMPERS]. 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 Utah [Mr. GARN] and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

The PRESIDING OFFICER (Mr. TRIBLE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 327 Leg.]

YEAS—79

Abdnor	Chiles	Dodd
Andrews	Cochran	Dole
Armstrong	Cohen	Domenici
Bentsen	Cranston	Durenberger
Biden	D'Amato	Eagleton
Bingaman	Danforth	Evans
Boschwitz	DeConcini	Ford
Bradley	Denton	Glenn
Chafee	Dixon	Goldwater

Gore	Leahy	Roth
Gorton	Levin	Rudman
Grassley	Long	Sarbanes
Harkin	Lugar	Sasser
Hatch	Matsunaga	Simon
Hatfield	McClure	Simpson
Hawkins	McConnell	Specter
Hecht	Metzenbaum	Stafford
Heinz	Mitchell	Stennis
Humphrey	Moynihan	Stevens
Inouye	Murkowski	Symms
Johnston	Nunn	Thurmond
Kassebaum	Packwood	Trible
Kasten	Pell	Wallop
Kennedy	Pressler	Warner
Kerry	Quayle	Wilson
Lautenberg	Riegle	
Laxalt	Rockefeller	

NAYS—19

Baucus	Gramm	Nickles
Boren	Hart	Proxmire
Broyhill	Heflin	Pryor
Bumpers	Helms	Weicker
Burdick	Hollings	Zorinsky
Byrd	Mattingly	
Exon	Melcher	

NOT VOTING—2

Garn	Mathias

So the motion to lay on the table amendment No. 3195 was agreed to.

□ 1520

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending motion to reconsider the tabling motion on the Melcher amendment be temporarily laid aside in order that I may offer the amendment which I now send to the desk on behalf of Senator PRESSLER.

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

AMENDMENT NO. 3196

(Purpose: To provide that certain telephones shall be hearing aid compatible)

Mr. JOHNSTON. Mr. President, I send the amendment to the desk on behalf of Mr. PRESSLER and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. PRESSLER, proposes an amendment numbered 3196.

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

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

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Subject to the provisions of subsection (b), all telephones sold, rented, or distributed by any other means in the United States after July 1, 1987, shall be hearing aid compatible, as defined in regulations promulgated by the Federal Communications Commission.

(b) The provisions of subsection (a) shall not apply to any telephone—

(1) that is manufactured before July 1, 1987; or

(2) which is not required to be registered under 47 C.F.R. 68.

HEARING-AID COMPATIBLE TELEPHONES

Mr. PRESSLER. Mr. President, I rise today on behalf of myself and Senators MATHIAS, MELCHER, HAWKINS, GORE, HATCH, MITCHELL, INOUYE, HECHT, SIMON, and HEINZ to urge passage of an amendment requiring that all new telephones manufactured after July 1, 1987, and which are sold, rented, or otherwise distributed in the United States shall be hearing-aid compatible. This important measure would afford hearing impaired individuals the same access to telephone communications as those who do not have any hearing loss. The amendment is a scaled down version of S. 402, a bill I introduced on behalf of myself and 28 cosponsors earlier this Congress. The key difference between this amendment and S. 402 is that this amendment does not require local telephone companies to provide specialized equipment for hearing impaired customers.

Passage of this amendment will greatly benefit the more than 2 million hearing aid users who can use only hearing-aid compatible telephones. Many of these people are members of our elderly population.

As the third ranking member of the Senate Special Committee on Aging, I am very familiar with the problems of the elderly. Hearing impairment has been identified as one of the most serious of those problems. A recent report by the Office of Technology Assessment, "Hearing Impairment and Elderly People," indicated that "the telephone plays an important role in maintaining the safety, independence, and quality of life of elderly people." The report goes on to state that hearing-aid compatible telephones can allow many hearing impaired elderly people to use the telephone, and "Federal legislation and regulations that increase the availability of these technologies would help many elderly people." Any step that the Senate can take to improve the quality of life of the elderly or other hearing impaired people is a step worthy of careful consideration.

Several years ago we began to move toward equal telephone access for the hearing impaired with passage of Public Law 97-410, the Telecommunications for the Disabled Act. This legislation required that the Federal Communications Commission [FCC] promulgate rules providing that all telephones installed in essential locations be hearing-aid compatible. Many people think that this step was adequate to provide the hearing impaired with equal access to telephone communication.

Unfortunately, the actual result of these rules was creation of a second class of citizens; namely, those persons who are able to use only essential telephones. I am sure my colleagues would agree that we did not intend to establish such restrictions against the hearing impaired. Nevertheless, those restrictions do exist. I, for one, cannot think of a single reason why one segment of our society—through no fault or choice of its own—should be able to use only specific telephones.

Mr. President, allow me to take a moment to illustrate the effect of the FCC regulations. One provision of those rules requires that when an employer installs a new telephone at the work station of a hearing impaired employee, that telephone must be hearing-aid compatible if that employee will use it in the course of work duties. At face value, that sounds like a positive development. But if the only compatible phone is at that employee's desk, how could he take an important call in another area of the office? How could that employee answer a page elsewhere in the office? A hearing impaired employee could not do either under this rule. With adoption of my amendment, there will be a day when all employees, regardless of their ability to hear, would be treated equally and would have equal access to the telephone.

Another type of workplace problem occurs when the employee does not have one specific work station. Take the case of Dr. F.E. Logan, an emergency room physician at a hospital in Carthage, MO. The hospital Dr. Logan worked at changed its telephone system to one that was not hearing-aid compatible, making it impossible for Dr. Logan to communicate with the various departments in the hospital. He was forced to retire from that hospital. If the telephone system that was installed in that hospital were hearing-aid compatible, Dr. Logan would still be working there today. With adoption of my amendment the Dr. Logans of this country would be able to keep their jobs.

The purpose of my amendment is very clear. After July 1, 1987, all new telephones distributed in this country would be hearing-aid compatible. This would not require the removal of any existing telephones. The amendment imposes no new budgetary burdens on the Federal Government. And it would not impose additional costs on consumers. The Undersecretary for International Trade has indicated that hearing-aid compatible telephones are "not necessarily any more expensive to produce, or sell at retail, than sets which are not hearing-aid compatible." Let me stress that point. This amendment will not increase either the cost of producing telephones or the ultimate price paid by the con-

sumer. Several of the largest manufacturers such as AT&T and ITT—who already manufacture hearing-aid compatible telephones—indicate that they do not charge a premium for hearing-aid compatible telephones.

Obviously, the problem does not lie with these companies. Almost all of AT&T's telephones are already hearing-aid compatible. Unfortunately, many of the other imported telephones are not compatible. The purpose of this amendment is to ensure that these telephones are hearing aid compatible in the future. It is prospective only. This amendment will bring those imports into line with the standard already established by these domestic firms.

Mr. President, I would like to indicate that the amendment now before us is the end product of a great deal of modification and compromise. As written, the amendment applies to wireline and cordless telephones only. It does not apply to land mobile or cellular phones. Similarly, we addressed the concern of the disposition of stocks which will be on the shelf or in the warehouse on July 1, 1987. The amendment has been fashioned in such a way that only those new telephones manufactured after that date need to be compatible. There will be no need to retrofit any existing telephone. These modifications have addressed the concerns of a number of firms and groups. For example, both the Motorola Corp. and Southwestern Bell have indicated that they do not have a problem with this measure. I think we have addressed the concerns of those who raised legitimate concerns about the language I distributed along with a dear colleague letter which I circulated on Monday of this week.

Finally, this amendment will bring an end to the discrimination that continues to exist for the hearing impaired. With passage of this measure we will take the crucial step toward ensuring that in the future the hearing impaired will enjoy the freedom of communication that the rest of our society already enjoys. I urge my colleagues to support this important amendment. It has broad support among groups which represent the hearing impaired and the elderly. Let me just read the following list of organizations which support hearing-aid compatible telephones:

American Association of Retired Persons.
Alexander Graham Bell Association for the Deaf.
National Center for Law and the Deaf.
National Association for Hearing and Speech Action.
National Association of Regulatory Utility Commissioners.
American Academy of Otolaryngology, Head and Neck Surgery.
Helen Bee Aural School.
Massachusetts Office of Handicapped Affairs.
Institute of Logopedics.
Virginia Department for the Deaf and Hearing Impaired.
Berks County Association for the Hearing Impaired.
Boston Guild for the Hearing Impaired.
Palmetto Industries.
Public Advocate of Maine.
Hearing Impaired Services of Northwestern Ohio.
Pike's Peak Center on Deafness.
Organizaton for the Use of the Telephone.
American Society for Deaf Children.
Consumers' Organization for the Hearing Impaired.
Commonwealth of Massachusetts Office of Handicapped Affairs.
Gallaudet College.
Hearing Impaired Services of Northwestern Ohio.
Maryland Office of People's Counsel.
National Association for the Deaf.
National Hearing Aid Society.
Northwestern University Program in Audiology and Hearing Impairment.
Suzanne Pathy Speak Up Institute.
United Church of Christ.
Voters' Interest League.
Washington Area Group for the Hard of Hearing.

Mr. President, let me conclude by once again urging my colleagues to support this amendment. Our hearing impaired citizens deserve equality.

Mr. DOLE. Mr. President, I would like to ask the distinguished Senator from South Dakota a question about the amendment that he has just offered to the continuing resolution. Clearly there is no Member in this body more concerned about the participation of persons with disabilities in all facets of American life than this Member. There is, however, a concern expressed by some that by requiring hearing-aid compatibility of all new telephones manufactured after July 1, 1987, and sold, rented, or distributed in the United States we will be adding on burdensome costs to all consumers.

Mr. PRESSLER. Mr. President, in response to the majority leader's question, let me say that the Under Secretary of Commerce for International Affairs indicates that hearing-aid compatible phones are not necessarily more expensive to produce or sell than noncompatible phones. Further, several of our largest telephone manufacturers indicate that they charge the same price for their compatible and noncompatible telephones. I must also add that I find it puzzling that in the many years that this issue has been discussed in and around Congress, the opponents of universal compatibility have never produced information which indicates that compatible phones are any more expensive to produce than noncompatible models.

Mr. DOLE. I thank my colleague for this information and applaud his efforts to improve the quality of life for those individuals with special sensory needs. This provision will ensure that an additional 2 million members of our society will be able to enjoy the freedom of telephone communication which all of us take so much for granted. They will be able to work, travel, and move throughout this great country of ours knowing that telephone communication is as available to them as it is to their able-bodied brothers. I am pleased to add my support for this important measure.

Mr. PRESSLER. I thank my colleague for his support and commend him on his eloquent statement in support of my amendment.

Mr. SIMON. I rise to support the amendment offered by my colleague from South Dakota and applaud his constant effort to bring quality telephone service to the Nation's hearing impaired.

Over my years in Congress, through my work on legislation to aid our handicapped, I have come to understand that while we have passed a number of laws guaranteeing the rights of our handicapped citizens, we often overlook more practical problems that could be addressed through Federal policy. The issue of telephone compatibility is one of those more parochial issues. While the hearing impaired do have access to many public telephones, there are those which are not yet equipped with necessary devices. This amendment would ensure that all new phones would be accessible for the hearing impaired.

As one who has worked with the hearing impaired, and as one who has recently begun wearing a hearing aid myself, I thank my colleague for his persistence on this issue and hope the amendment will be adopted.

I would like to ask my colleague from South Dakota to clarify exactly what equipment will be covered by this amendment—existing equipment, new equipment produced after a certain date?

Mr. PRESSLER. I thank the Senator from Illinois for his kind words of support. In answer to my colleague's question, let me indicate that this amendment applies only to those new telephones manufactured after July 1, 1987 which are sold, rented, or distributed in the United States. This would not apply to equipment in service prior to July 1, 1987, or to equipment that is pulled out of service and refurbished or reconditioned, provided that such equipment was manufactured prior to July 1, 1987. In addition, the amendment would only apply to equipment which must be registered under 47 C.F.R. 68. At present, wireline telephones and cordless phones must be registered under these regulations. Cellular telephones and land mobile phones would not be the subject to the requirements of this amendment.

Mr. SIMON. I thank my colleague for clarifying this matter.

Mr. MATHIAS. Mr. President, in 1876 Alexander Graham Bell patented

the telephone, a byproduct of his search for a device to help hearing impaired people. In 1982, with the cooperation of the senior Senator from Arizona, Congress enacted the Telecommunications for the Disabled Act, also to help hearing impaired people.

In compliance with the Disabled Act, the Federal Communications Commission has categorized certain telephones as "essential," and these must be hearing-aid compatible. Essential telephones include coin-operated telephones and telephones provided for emergency use, such as those in elevators, along highways, tunnels, and bridges. The FCC also requires that a portion of new telephones installed in hotel and motel rooms, hospitals and nursing homes, and public parts of offices and businesses be hearing-aid compatible.

Today all new domestically manufactured telephones are hearing-aid compatible. All operating Western Electric/AT&T/Bell System telephones are compatible; all telephones on Capitol Hill are compatible. About half of the imports are compatible. According to both the industry and the Commerce Department, compatible telephones are not more expensive to produce or in retail price than telephones which are not compatible. The General Services Administration, for example, procures only compatible telephones.

The advocates of this amendment don't find fault with the Disabled Act or with the FCC's enforcement and application of the act. Both have done a lot to help people who rely on hearing aids. They have given hearing aid users a taste of what it is like to use the telephone. Now we want to expand their access to cover all new telephones.

If the FCC is studying the act to gauge its effectiveness, that's just fine. It is effective, but it covers only telephones categorized as "essential." Most of us could not carry on in our homes, at our jobs, or anywhere else for as much as 1 day without using a telephone. Using the telephone has become an indispensable part of modern life. It is essential to find a job and keep a job; it is essential to maintain normal contact with other people; it is essential for mobility.

Adoption of this amendment would make the telephone an instrument of opportunity for hearing impaired Americans instead of a handicap to effective communication and participation in everyday life.

Mr. JOHNSTON. Mr. President, this is an amendment which was not on the list. It has been worked out and agreed to on both sides of the aisle, particularly Senator HOLLINGS and Senator METZENBAUM. It provides that the telephones be hearing-aid compatible. With that explanation, I yield to the Senator from Oregon.

Mr. HATFIELD. We will accept the amendment.

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

The amendment (No. 3196) was agreed to.

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

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

The motion to lay on the table was agreed to.

GOLDEN GAVEL AWARDED TO SENATOR DENTON

Mr. DOLE. Mr. President, I wanted to indicate that as of 3:11 p.m. today, Friday, October 3, 1986, the distinguished occupant of the chair, Senator JEREMIAH DENTON of Alabama, has now presided over the Senate for 100 hours and he will be awarded the Golden Gavel Award for his time and dedication in presiding over the Senate.

I extend my congratulations, as I know all Members do, to the distinguished Senator from Alabama.

[Applause.]

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The Senate continued with the consideration of the joint resolution.

Mr. JOHNSTON. Mr. President, I ask unanimous consent to temporarily lay aside the pending motion to reconsider the Melcher amendment in order that I may offer an amendment.

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

AMENDMENT NO. 3197

Mr. JOHNSTON. 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 Louisiana [Mr. JOHNSTON] proposes an amendment numbered 3197.

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

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

The amendment is as follows:

At the appropriate place, in the joint resolution insert the following:

SEC. — (a). Notwithstanding any other provision of law, the Administrator of General Services is authorized during fiscal year 1987 to accept periodic reimbursements from the Senate for the cost of any equipment purchased for the Senate with funds from the General Supply Fund established under section 109 of the Federal Property and Administrative Services Act of 1949. The amount of each such periodic reimbursement shall be computed by amortizing the total cost of each item of equipment over the useful life of the equipment, as determined by the Administrator, in consultation with the Sergeant at Arms of the Senate.

(b) Subsection (a) applies to reimbursements to the General Supply Fund for any equipment purchased for the Senate before, on, or after the date of enactment of this section.

Mr. JOHNSTON. Mr. President, this amendment has been cleared on both sides. It is offered on behalf of the Sergeant at Arms to continue for 1 year the established practice of incrementally reimbursing the General Services Administration for furniture and other equipment purchases they have made and will be making for Senate offices.

Mr. HATFIELD. Mr. President, we are offering this amendment as a committee amendment on behalf of the Sergeant at Arms to continue for 1 year the established practice of incrementally reimbursing the General Services Administration for furniture and other equipment purchases they have made and will be making for Senate offices. It is necessary because of a General Accounting Office opinion which would otherwise require a conforming change in our method of payment as of October 1, 1986.

For essentially the past 35 years, our arrangement with GSA has been to request the provision of whatever furniture items are needed and to pay for them on a "life of the equipment" amortization basis. Now, however, GAO has determined that that is inconsistent with the underlying statute and that not only should our reimbursement for such purchases be made in full within 45 days but also that we should work out a lump-sum settlement of our account for furniture already in inventory.

Confusion over the implementation of this policy redirection, including the question of who would have responsibility for maintenance and who would have ownership and when, has persisted right up to the most recent GAO clarifying letter of September 17, 1986. As a result, the Sergeant at Arms has not requested—and the Appropriations Committee has not yet considered—the additional funding it would take to meet the Senate's equipment needs under the new system. This amendment would give us time to address the matter and decide on a response to the changeover proposal.

Mr. President, I believe this amendment can be characterized as internal administrative in nature and is acceptable on both sides. Accordingly, I move its adoption.

Mr. METZENBAUM. Mr. President, is that one of the amendments that was cleared last night or is this something new which has developed?

Mr. JOHNSTON. It is something new. It is a request by the Sergeant at Arms.

Mr. METZENBAUM. It is a Sergeant at Arms request?

Mr. JOHNSTON. Yes; it involves the purchase of furniture. They wish to be able to reimburse the General Services Administration.

Mr. METZENBAUM. I just want to be certain that we are not letting down the bars for a host of new amendments.

Mr. JOHNSTON. No; this is purely a technical in-house arrangement.

Mr. METZENBAUM. I have no objection.

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

The amendment (No. 3197) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I may proceed for 1 minute, temporarily laying aside the pending matter.

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

Mr. JOHNSTON. Mr. President, we are waiting for the Kennedy amendment which I believe we are going to be able to clear with a second-degree amendment by Senator HELMS, which we will also clear. I will announce that we are ready for those at this time, if Senator KENNEDY is within sound of my voice.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield?

Mr. DOMENICI. Will the Senator yield 30 seconds?

Mr. JOHNSTON. Mr. President, if I have time left from my 1 minute, I yield 30 seconds.

Mr. DOMENICI. I did not know the Senator was that limited. I will get some other time.

AMENDMENT NO. 3198

(Purpose: To authorize the Secretary of Health and Human Services to make grants for demonstration projects for networks for services relating to acquired immune deficiency syndrome, and for other purposes)

Mr. JOHNSTON. Mr. President, I now have in hand the Kennedy amendment. I ask unanimous consent that the pending motion to reconsider the motion to table the Melcher amendment be temporarily laid aside in order that I may offer, on behalf of Senator KENNEDY, the amendment which I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. KENNEDY, proposes an amendment numbered 3198.

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

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

The amendment is as follows:

At the end of the joint resolution, add the following new title:

TITLE II—ACQUIRED IMMUNE DEFICIENCY SYNDROME

SEC. 201. This title may be cited as the "Acquired Immune Deficiency Syndrome Service Coordination Act of 1986".

SEC. 202. The Congress finds that:

(1) Acquired immune deficiency syndrome is a catastrophic disease and public health problem with consequences which pose significant challenges to American society. It has been declared the Nation's "number one public health priority".

(2) As of June 1986, over 21,500 cases of acquired immune deficiency syndrome have been reported. According to estimates by the Public Health Service, by 1991 there may be 196,000 cases of acquired immune deficiency syndrome and 125,000 deaths from acquired immune deficiency syndrome. The number of Americans who are infected with the AIDS virus is currently estimated to be between 1,000,000 and 1,500,000 individuals.

(3) The Public Health Service estimates that by 1991, the direct costs to provide health care for individuals with acquired immune deficiency syndrome will be between $8,000,000,000 and $16,000,000,000. In 1986, it is estimated the United States will spend between $870,000,000 and $1,300,000,000 for health care for individuals with acquired immune deficiency syndrome.

(4) The costs of caring for individuals with acquired immune deficiency syndrome are disproportionately paid for in certain urban centers. As of June 1986, there are 23 cities in which there are at least 100 cases of acquired immune deficiency syndrome and 1,000 cases of acquired immune deficiency syndrome related complex. Careful coordination of health services has significantly reduced the cost of providing health care in some urban centers.

SEC. 203. Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART J—ACQUIRED IMMUNE DEFICIENCY SYNDROME

"DEMONSTRATION PROJECTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 391. (a) The Secretary may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion in service areas of coordinating networks for the provision of comprehensive and cost-effective health and support systems for eligible individuals. Services to be provided through each such network shall include—

"(1) comprehensive ambulatory care services specific to the diagnosis and treatment of acquired immune deficiency syndrome;

"(2) home health care services, hospice services, and respite care services;

"(3) counseling and mental health services;

"(4) case management services; and

"(5) education for health personnel concerning acquired immune deficiency syndrome and concerning infection with the AIDS virus.

"(b) A grant made under this section shall not be used for—

"(1) the construction or major renovation of facilities;

"(2) the payment or reduction of deficits of an entity which resulted from obligations which were incurred by the entity prior to the date on which the entity receives payment under a grant under this section;

"(3) payment for items and services for which payment may be made under title XVIII of the Social Security Act or under a State plan approved under title XIX of such Act; or

"(4) payment for inpatient hospital services.

"(c) No grant may be made under this section for a demonstration project unless an application therefor is submitted to the Secretary in such form and at such time as the Secretary may prescribe. Each such application shall contain—

"(1) information demonstrating—

"(A) that existing resources in the service area to be served by the demonstration project are insufficient to meet the needs of such service area for care and treatment of eligible individuals; and

"(B) that the entity applying for the grant has a successful record of managing projects which provide a variety of health services;

"(2) assurances that appropriate local health care providers and voluntary organizations have been consulted in development of the application for the grant;

"(3) evidence of coordination with, and support for the application for such grant by, local public health authorities;

"(4) assurances that the network to be supported by the grant will have appropriate relationships with an academic health center;

"(5) assurances that such network will make every reasonable effort to collect appropriate reimbursement for health services provided by or through such network to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

"(6) assurances that Federal funds made available under this section for any period will be used to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the services for which funds are provided under this section and will in no event supplant such State, local, and other non-Federal funds;

"(7) a description of the manner in which the entity applying for a grant under this section will evaluate the services and activities provided by or through the network to be developed, established, or expanded with such grant; and

"(8) such other information as the Secretary may prescribe.

"(d) In making grants under this section, the Secretary shall give special consideration to applicants from service areas with current or projected high incidences of eligible individuals, including service areas with current or projected high incidences of eligible individuals who are children or who are intravenous drug abusers.

"(e) The Secretary may not make a grant under this section in any fiscal year to any

entity which receives or has received a grant under section 301 of this Act pursuant to the provisions of Public Law 99-178 for a project demonstrating the delivery of health care services to victims of acquired immune deficiency syndrome.

"(f) No grant under this section for any fiscal year may exceed $1,000,000.

"(g) For purposes of this section—

"(1) the term 'eligible individual' means any individual who has acquired immune deficiency syndrome or any individual who is infected with the AIDS virus;

"(2) the term 'nonprofit private entity' means an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (other than a private foundation as defined in section 509(a) of such Code); and

"(3) the term 'service area' means a metropolitan area which has a significant incidence of acquired immune deficiency syndrome, as determined by the Secretary.

(h) To carry out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1988. Amounts appropriated under this section shall remain available for obligation or expenditure until September 30, 1989.".

SEC. 204. The Secretary of Health and Human Services shall conduct, or shall provide for the conduct of, a survey to determine—

(1) the total number of children in the United States with acquired immune deficiency syndrome who have been abandoned by their parents and are living in hospital environments;

(2) the total number of children in the United States with acquired immune deficiency syndrome who have been placed in foster care;

(3) the problems encountered by social service agencies in placing children with acquired immune deficiency syndrome in foster care; and

(4) recommendations for improving the care of children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

Mr. HATCH. Mr. President, I rise in support of this amendment. This legislation was introduced on April 21, 1986, by my friend and colleague from Massachusetts [Senator KENNEDY], after the Committee on Labor and Human Resources held a hearing on "AIDS: Oversight of an Epidemic."

After the bill was introduced, the Senator from Massachusetts [Senator KENNEDY], the Senator from Indiana [Senator QUAYLE] and I worked together to revise the original bill. We bring to the Senate an amended piece of legislation which we believe has strong bipartisan support and will address some of the problems the Nation must face related to the AIDS epidemic. As a measure of its bipartisan support, the Committee unanimously moved to favorably report this legislation on June 25, 1986.

Briefly, this amendment provides seed money to facilitate development of innovative methods for delivering high quality, cost-effective health care to individuals with AIDS and to encourage dissemination of up-to-date information about AIDS to health care personnel.

It is important to recognize what this amendment is not. It is not an entitlement or a new categorical grant program. Rather, it is a one time expenditure to encourage and nurture local solutions to the AIDS problem.

This legislation encourages those population centers with a growing number of individuals infected with the AIDS virus to establish coordinating networks of comprehensive health services which will provide, in a humane, high-quality, and cost-effective manner, the full range of services required by individuals with AIDS. While most of the demonstration projects will go to regions where AIDS is prevalent, an appropriate number of grants will go to areas of lower AIDS incidence.

This legislation encourages the development of outpatient services for individuals infected with the AIDS virus instead of relying extensively on more expensive inpatient hospital services.

Last, this legislation ensures the provision of current information for health personnel involved in the care of individuals with AIDS.

In conclusion, Mr. President, I urge my colleagues to support this legislation. This is the right bill at the right time. By 1991, the Public Health Service estimates that 196,000 cases of AIDS will have developed in our country. AIDS coordinating centers authorized by this legislation will be in place to handle the expected flood of cases. These centers will help prevent spread of this disease and insure appropriate and affordable care for persons with AIDS.

Mr. KENNEDY. Mr. President, I would like to introduce an amendment. Mr. President, since 1981 over 25,000 cases of AIDS have been reported to the Centers for Disease Control. For every known case of AIDS there are between 50 and 100 people thought to be infected with the AIDS virus. This means that there are currently between 1 and 2 million Americans infected with the virus, many of whom will develop the disease in the near future.

Mr. President, the Public Health Service recently announced its 5 year projections for the AIDS problem. They revealed some staggering statistics. By the end of 1991, a cumulative total of 270,000 AIDS cases will have been diagnosed and approximately 5 million Americans will have been infected with the disease. For 1986 the annual direct costs of providing health care to individuals afflicted with AIDS is projected to be near $1.3 billion. By 1991, the costs may be more than 10 times as high, $16 billion.

The economic burden of caring for individuals with AIDS is currently borne and will continue to be borne in the future disproportionately by certain urban centers. There are currently 23 cities with more than 100 cases of AIDS. Since the ratio of identified cases to infected individuals is at least 50 to 1, this means that each of these 23 cities has at least 5,000 people infected with the AIDS virus. I would like to read the names of the cities with over 100 cases of AIDS. They are New York, San Francisco, Los Angeles, Washington, DC, Miami, Houston, Newark, Chicago, Philadelphia, Dallas, Boston, Atlanta, Jersey City, NJ, Fort Lauderdale, San Diego, Seattle, New Orleans, West Palm Beach, Anaheim, Baltimore, Denver, San Juan, PR. Mr. President, until a cure or vaccine for AIDS becomes available, it will be necessary to foster development of high quality, cost-effective means of caring for large numbers of individuals.

This amendment aims to facilitate development of methods for delivering high quality, cost-effective health care to individuals with AIDS and to encourage the dissemination of information about AIDS to health care providers. This amendment would establish a demonstration program of networks of comprehensive services for patients with AIDS in populations centers which have a high or rapidly rising incidence of this disease. Each of these networks would include: comprehensive outpatient services specific to the diagnosis and treatment of AIDS, home health care services, hospice services and respite care services, counseling and mental health and psychosocial support services, case management services, and education for health personnel concerning AIDS and infection with the AIDS virus. These networks will provide cost-effective services to AIDS patients by encouraging outpatient treatment for individuals infected with the AIDS virus wherever possible instead of relying on more expensive inpatient hospital services.

Mr. President, in a hearing before our committee on AIDS, all of us who were present were very moved by testimony we heard about children with AIDS who have been abandoned by their parents. Accordingly, where appropriate these networks will provide special services for children with AIDS. Furthermore, this legislation directs the Centers for Disease Control to conduct a study of these perplexing problems of children with AIDS who have been abandoned and to make recommendations about how to handle them.

Mr. President, this bill has received the unanimous, bipartisan support from my colleagues on the Labor and Human Resources Committee from which it was reported out without objection, and I am joined by Senators on both sides of the aisle as cosponsors. I would particularly like to mention the cosponsorship of the following Senators: Senator DANIEL MOYNI-

HAN, Senator PAUL SARBANES, Senator JOHN HEINZ, Senator ORRIN HATCH, Senator PETE WILSON, Senator ALFONSE D'AMATO, Senator HOWARD METZENBAUM, Senator CHRIS DODD, Senator PAUL SIMON, Senator DANIEL INOUYE, Senator JOHN KERRY, and Senator SPARK MATSUNAGA. This bill is a sound approach to public policy. I hope my colleagues will recognize its strengths and join me in voting for its speedy passage.

Mr. JOHNSTON. Mr. President, this is the amendment previously described, to which the Senator from North Carolina will offer a second-degree amendment, which has also been cleared.

AMENDMENT NO. 3199 TO AMENDMENT NO. 3198

(Purpose: To void D.C. Law 6-170)

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

Mr. JOHNSTON. I yield.

Mr. HELMS. Mr. President, I have an amendment at the desk, a second-degree amendment. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3199 to amendment No. 3198.

Mr. HELMS. 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 pending amendment, add the following:

SEC. . DISAPPROVAL OF ACTION OF THE DISTRICT OF COLUMBIA COUNCIL.

The Congress disapproves of the action of the District of Columbia Council described as follows: The Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170); and, notwithstanding any other provision of law, D.C. Law 6-170 shall be null and void effective from June 6, 1986.

Mr. HELMS. Mr. President, the amendment pending at the desk is simple and straightforward. It would disapprove the D.C. aids law, D.C. law 6-170.

As Senators will recall, D.C. law 6-170 prohibits health, disability, and life insurers in the District of Columbia from all testing for acquired immune deficiency syndrome [AIDS]; AIDS related complex [ARC]; and the HTLV-III infection and from using any test to deny, amend, cancel or refuse to renew a policy. For 5 years under this D.C. law, insurers are prohibited from raising the rates of those who test positive for the presence of any probable causative agent for AIDS, ARC, or the HTLV-III infection. Unless the physician has been diagnosed by a licensed physician as having AIDS or the applicant displays other symptoms to show that the applicant has developed AIDS, the insured cannot conduct any AIDS test to determine insurance or to set premiums.

On August 1, by a 53-41 vote, this Senate adopted an amendment to the debt limit extension bill (H.J. Res. 668) to void this D.C. AIDS law. I commend this Senate for its wisdom. Members understand how the D.C. AIDS law is special interest legislation; how it will force insurers out of the D.C. market and how, eventually, it will threaten the availability of insurance for thousands of D.C. residents.

Unfortunately, the House has yet to act on the long-term debt limit bill. On August 15, the House sent over a 30-day debt limit extension, and it is likely that another short-term debt limit will be sent over again, forcing the long-term debt limit into the adjournment squeeze where it is probable, if not certain, that a number of Senate amendments will be stripped out of the bill.

Mr. President, as insurance companies continue to stop writing health and life insurance in the District, this Senator believes it is imperative for this Senate to force the House of Representatives to act now to overturn this unjust and unwise law.

Mr. President, I ask unanimous consent that the following be inserted into the RECORD: Washington Post article entitled, "Some Insurers Stop Writing Health, Life Policies in D.C.", of August 16, 1986, which lists insurance companies pulling out of the District of Columbia; and four letters from insurance companies to me stating their concerns over the D.C. AIDS law and that they have discontinued writing health and/or life insurance in the District of Columbia as of August 1, 1986.

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

SOME INSURERS STOP WRITING HEALTH, LIFE POLICIES IN D.C.

(By Sandra Evans)

An increasing number of large insurance companies have told their agents here to stop writing individual health and life insurance policies for District residents as a result of a new city law that prohibits insurers from testing prospective clients for exposure to an AIDS virus.

Leslie Jackson, an official of the D.C. Life Underwriters Association, said he had been told this week of about 20 life insurance companies, some of them among the largest, that would no longer write individual policies here.

"This is serious business," Jackson said. "If they haven't made the decision to pull out, they sure as . . . are thinking about it."

The ultimate impact of these decisions on the cost and availability of insurance of city residents is still unclear, according to experts in the profession. Although other insurers may follow suit, some experts say it is possible that those continuing to sell individual policies will simply take up more of the market share, particularly since there are so many insurers.

"It's enough to pay attention to, certainly," said Margaret Gentry, a spokeswoman for D.C. Council member John Ray (D-At large), sponsor of the city law.

But, she added, other companies "may see a chance to pick up a larger share of the business. It's very competitive."

There are 618 companies licensed to sell life insurance in the District, of which about 80 percent actually do so, according to a spokesman for the D.C. superintendent of insurance, which regulates insurance companies in the city.

The top 20 insurers in the city have only 38 percent of the market share for all types of life insurance, according to the D.C. Department of Consumer and Regulatory Affairs.

The new law, which went into effect Aug. 7, prohibits insurers from denying coverage on the basis of a positive test for exposure to the acquired immune deficiency syndrome virus and prevents for five years the imposition of higher premiums for those who test positive.

Group life and health insurance plans, by which most individuals get their coverage, will not be affected by those insurance companies' decisions to stop writing policies for individuals. Generally, individuals are not tested for diseases when they enter a group plan.

Aetna Life Insurance Co. told its agents not to write any more individual life and health policies to District residents because of the restrictions under the new law, said Carolyn Harris-Burney, manager of corporate communications.

Mutual of Omaha is another large insurer that has stopped writing individual policies.

"We felt that this bill basically removed the right of insurance companies to properly evaluate risks, something inherent to the insurance business," said Mutual of Omaha spokesman Tom O'Connor.

That company and its life insurance affiliate, United of Omaha, write $28.4 million in insurance policies in the District, of which about $2 million is in individual policies, he said.

Prudential Insurance Co. of America has made no change in writing insurance in the District "as of today," said spokesman Richard Matthews.

"We are carefully monitoring the situation," he said.

Some companies may be waiting to see the result of a lawsuit filed by the Health and Life Insurance Association in an effort to overturn the bill, Jackson said.

Others cited efforts in Congress to repeal the legislation.

Blue Cross & Blue Shield, which has the largest market share of individual health insurance policies here, never has required tests for AIDS virus and continues to write individual policies, said Richard A. Cook, vice president and legal and legislative affairs.

Cook predicted that the impact of the legislation on costs to the company would not be great and probably would be spread out evenly among clients throughout the region.

PROVIDENT LIFE & ACCIDENT INSURANCE CO.

August 20, 1986.

DC Act 6-170; DC AIDS Testing Law.

Hon. JESSE HELMS, Jr.,

U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: As you can imagine we are very much concerned about the bill passed in the District of Columbia placing severe restrictions on the underwriting of

new applications for insurance by prohibiting the testing of AIDS in determining insurability or in establishing premiums.

We were most pleased when you successfully, in the Senate, added an amendment to HJ Res 668, the public debt limit extension, to disapprove DC 6-170 making the legislation null and void.

Since a similar amendment was not passed by the House, your amendment to be enacted into law will, of course, have to be accepted by the House conferees when the debt limit extension is considered in joint conference.

I have written each member of the Tennessee delegation asking them to urge their colleagues who are conferees to support your amendment. So far the response has been favorable.

My purpose in writing this letter is not only to thank you for offering the amendment which was adopted by the Senate, but to also inform you that Provident is no longer accepting life insurance applications in the District of Columbia.

Again, thanks so much for your help in this important matter.

Sincerely yours,

BERNARD T. HURLEY, Jr.

MUTUAL OF OMAHA,
Washington, DC, August 8, 1986.

Hon. JESSE HELMS, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: Bill number 6-343 passed by the District of Columbia has the effect of removing the company's right to adequately underwrite certain life and health risks.

Therefore, the companies, Mutual of Omaha and United of Omaha, have decided to discontinue marketing all life and health products except annuities and Medicare supplements in the District of Columbia.

Sincerely,

JAMES E. BARRETT,
Executive Vice President.

GREAT-WEST LIFE,
Englewood, CO. September 5, 1986.

Hon JESSE HELMS,
U.S. Senate, Washington, DC.

Att: Ms. Julie Bullard.

DEAR SENATOR HELMS: The Great-West Life Assurance Company recently concluded that it could not continue to accept applications for individual life and disability insurance from residents of The District of Columbia.

While we regretted having to take this action we believe we had to in order to protect our participating policyholders and our shareholders.

Insurance is based on the simple concept of pooling comparable risks. Through the normal underwriting process we determine the degree of risk inherent in each life we underwrite. When we cannot pursue this underwriting process we cannot measure the risk we are undertaking.

Obviously, in life insurance, the applicant's present medical condition is a primary determinant of risk. Legislation such as Bill 6-343 that prohibits us from measuring this undermines the whole concept of pooling comparable risks.

To continue to do business on the terms required by the District's legislators would inevitably mean that our present policyholders would pay for increased mortality costs as risks that would not normally be insurable become covered due to our inability to properly underwrite them. To expose our current policyholders to this certainty is not sound management and not what they expect of us.

Everyone hopes that cures will be found for diseases that are presently terminal. Until cures are found, private insurance should not be used as a substitute for social security.

Sincerely,

WILLIAM T. MCCALLUM,
Senior Vice President, Individual.

AETNA,
LAW DEPARTMENT,
Hartford, CT, August 12, 1986.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: Julie Bullard of your office requested information concerning Aetna's reaction to the "Prohibition of Discrimination in the Provision of Insurance Act of 1986." which became effective in the District of Columbia on August 7, 1986. The Act precludes insurers from properly identifying those individuals who are at risk for developing AIDS (acquired immune dificiency syndrome) and ARC (AIDS-related complex.) Under the new law, underwriting and rate-making decisions may not take into account the results of testing for the presence of antibodies to the HTLV-III virus, which has been associated with AIDS, or other evidence of immune deficiencies.

Aetna believes that the effect of this law will be to prohibit insurers from using appropriate medical information, thereby fundamentally compromising their ability to effectively and equitably underwrite and price business. For this reason, Aetna has instituted a moratorium on accepting new applications until further notice (unless contractually committed to do so) for individually underwritten life and health insurance policies in the District of Columbia.

Insurance is designed to provide protection against unforseen losses. If insurers are not permitted to identify individuals who are at demonstrably higher risk of contracting a serious illness, the insurance mechanism cannot operate and affordable insurance products cannot be made available. The expected claim costs for individuals who test positive for the presence of the HTLV-III virus are so much higher than for non-exposed insureds that the effect is a price spiral generated by the continuing addition of high risk individuals and the simultaneous loss of others who are priced out of the market. By restricting the insurance industry's use of sound underwriting principles, the new law would impose unfair economic burdens on the insurance-buying public in the District of Columbia and threaten the financial stability of the insurers to which the public looks for risk protection.

Aetna is strongly committed to doing business in the District of Columbia and supports responsible efforts to restore a positive insurance underwriting environment.

Sincerely,

MALCOLM O. CAMPBELL, Jr.

Mr. HELMS. Mr. President, I urge my colleagues to support my amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment to amendment No. 3199.

Amendment (No. 3199) to amendment No. 3198 was agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Massachusetts, as amended by the Senator from North Carolina? If not, the question is on agreeing to the amendment, as amended.

Amendment No. 3198, as amended, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I wonder if I might ask the distinguished appropriations chairman and the ranking member a question.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending motion to reconsider the motion to table the Melcher amendment be temporarily laid aside in order that we may enter into a colloquy with the Senator from New Mexico.

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

□ 1530

Mr. DOMENICI. Mr. President, I thank the Senator from Louisiana. I was just going to ask the managers something. I think they both recall when we were on the drug bill, the Senator from New Mexico, on behalf of many Senators, offered an amendment to clear a residence problem for the homeless. Under current law, they may not get their veterans checks because they do not have a home, they may not get food stamps because they do not have an address. It just came to my attention that we may not get a conference on the drug bill with those changes which permit the homeless to receive benefits which they are entitled to but would not receive because of residency requirements. I was wondering if the Senators might consider, if the body had no objection, accepting that amendment. I believe both Houses want to do it, and I did not clear it. But it came to me in the last couple of minutes that if that drug bill does not get a conference, we will never get that done.

Mr. JOHNSTON. Mr. President, if the Senator will yield, I think the first inquiry on this side ought to be with the authorizing committee.

Mr. DOMENICI. It had no objection from anyone before. If it goes through on both bills, it is fine with me.

Mr. BIDEN. If the Senator will yield, although it would not come to the Judiciary Committee, I would strongly urge that the suggestion of the Senator from New Mexico be entertained because we may, for a whole range of reasons, not end up with a bill. I strongly support the suggestion.

I know of no objection. It was strongly supported on this side of the aisle. I encourage my colleagues to accept it.

Mr. DOMENICI. I will bring it down, since it has just come to my attention. I am worried it will not get through and I will bring it down to you and clear it. I just wanted to bring it to your attention.

Mr. METZENBAUM. Mr. President, if the Senators will yield, I do not want to object, but I want to say to the managers that I will not object if I have some assurance from them that this is not the beginning of a pattern. We agreed we would only take those submitted there and those on the list. Once we start to open the door for exceptions, it becomes a very challenging responsibility to say no. I do not want to be on the floor saying no. If the managers will give us some assurance that this will not be the beginning of a pattern, I have no objection.

Mr. DOMENICI. I will not do it if it causes any concern, Mr. President.

Mr. JOHNSTON. Mr. President, the matter has not been cleared, of course. We shall consult with the Senator from Ohio, but I can assure him that not only will we consult with him on this particular matter, but we have no intention of opening up this matter.

I might say to my colleagues that we now have, as I judge it, three matters yet to be completed. One is the matter of the Philippines, as to which there are a number of reservations, I think at least four amendments that are reserved. I understand there will be a leadership amendment that will be accepted by agreement.

Second, there is the matter of the Melcher amendment, which I believe also will be settled by compromise. If I may ask the distinguished Senator from Mississippi, is it his understanding that the Melcher amendment has a good chance of being compromised?

Mr. COCHRAN. Mr. President, if the distinguished Senator will yield, I am advised that progress is being made in developing a proposal to submit to the distinguished Senator from Montana in an endeavor to work out this amendment so it can be agreed upon and included in the bill.

I am told that a counterproposal has been developed and is ready to be submitted to the Senator from Montana.

Mr. JOHNSTON. I thank the Senator.

Mr. President, the other matter yet to be disposed of is the bipartisan drug package, which I believe will be by agreement and should really not take any debate, but a very brief description.

If I am correct on all those matters, Mr. President, the amount of debate left is very little. There are some matters yet to be finally flanged up, but we are virtually at the end.

I understand that there are three other minor matters being cleared now. I think those would be very minor and will be cleared. So I think we are very close to going to third reading. I hope, at least, that we are.

AMENDMENT NO. 3200

(Purpose: To amend the Agricultural Act of 1949 to modify cross compliance requirements for producers of extra long staple cotton, and for other purposes)

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

The PRESIDING OFFICER. Is there objection to setting aside the Melcher amendment? If not, the Melcher amendment is set aside.

The clerk will state the amendment of the Senator from Mississippi [Mr. COCHRAN].

The bill clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 3200.

Mr. COCHRAN. 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:

SEC. . CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may be not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. . LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be 1 local administrative area in any county for which there had been established less than 3 local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by paragaph (1)), by striking out ": *Provided*," and all that follows through the period and inserting in lieu thereof a period.

AMENDMENT NO. 3201

Mr. COCHRAN. Mr. President, in behalf of the Senator from Oklahoma [Mr. BOREN], I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment without objection.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. BOREN, proposes an amendment numbered 3201 to amendment No. 3200.

Mr. BOREN. 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 amendment 3200, insert the following new sections:

SEC. . BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

(a) Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

(b) The amendment made by this section shall not be applicable to any producer of 1986-crop wheat who (1) elects to have payments under section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 computed in accordance with the provisions of law in effect prior to the enactment of this Act and (2) so informs the Secretary of Agriculture in writing by December 1, 1986.

SEC. . ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 is amended by adding at the end thereof a new subsection (f) as follows:

"(f) For purposes of this subtitle, alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary, shall be considered agricultural commodities.".

Mr. BOREN. I ask unanimous consent that the following Senators be added as cosponsors of the second-degree amendment: Senators DOLE, ZORINSKY, ANDREWS, EXON, NICKLES, MELCHER, ABDNOR, KASSEBAUM, and BURDICK.

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

Mr. COCHRAN. Mr. President, I state by way of explanation that this is an amendment that had been reviewed yesterday by the committee that was designated to make an effort to clear items that could be cleared and were basically noncontroversial. This item had been offered earlier and was withdrawn because there was some difference of opinion about one provision. That has now been worked out, I am pleased to advise the Senate, and I am told the matter has now been cleared. It relates to cross-compliance provisions.

It is a matter which has been approved by the chairman of the Com-

mittee on Agriculture and the Democratic side of the Agriculture Committee. I am told it has been cleared by all the parties.

Mr. JOHNSTON. Mr. President, the Senator from Mississippi is correct. This is one of those matters that was pending last night, was covered by the unanimous-consent agreement last night. I believe the objection did come from the distinguished Senator from Oklahoma [Mr. BOREN] who has just indicated he is now agreeable to this. So it has been cleared and we accept the amendment.

Mr. BOREN. Mr. President, I thank my colleague from Louisiana. He is correct in what he has said. We have now worked through the second-degree amendment which has been offered on my behalf by the Senator from Mississippi. This deals with wheat deficiency payments, a matter already discussed several times on the floor. All modifications have been worked out to the satisfaction of all parties.

ADJUSTMENT OF BASIS OF DETERMINATION OF WHEAT DEFICIENCY PAYMENTS

Mr. President, this amendment is on behalf of Senators DOLE, ZORINSKY, ANDREWS, EXON, NICKLES, MELCHER, ABDNOR, KASSEBAUM, BURDICK, and myself. It will modify the basis for determination of a portion of wheat deficiency payments for the 1986 wheat crop.

This amendment is virtually identical to the one adopted on August 1 as part of the debt limit bill. We have made one modification which gives producers the option of receiving their final deficiency payment in the present calendar year or in calendar year 1987.

As I have stated before, this amendment will not cost the taxpayers 1 cent. According to CBO estimates, there is no cost associated with the amendment.

The Food Security Act of 1985 included a provision which requires a portion of the deficiency payment to be determined on the basis of the reduced loan rate or the average price received by farmers during the marketing year. In the past, the entire deficiency was based on the loan rate or the average price during the first 5 months of the marketing year. Under previous law, producers could get their entire deficiency payment 5 months after the beginning of the marketing year. For wheat, that meant producers received their deficiency payments in November. Under the farm bill enacted this past year, producers can get a portion of their deficiency payment in November, but must wait until June or July of the next year to receive the balance.

The 1985 farm bill provides for two deficiency payments, in essence. The regular deficiency payment is based on the difference between the target price and the statutory loan rate or the average market price during the first 5 months of the marketing year, whichever is higher. The Secretary has the authority under the law to reduce the loan rate by up to 20 percent. If the Secretary uses this authority, which he has for the 1986 wheat crop, the producer is then entitled to another deficiency payment. This payment is based on the difference between the statutory loan rate and the new loan rate or the average market price during the entire marketing year.

The 1986 program for wheat provides for a target price of $4.38 per bushel. The statutory loan rate is $3, providing for a maximum deficiency payment of $1.38. The Secretary did use his authority to drop the loan rate to $2.40 thereby providing for a second deficiency payment with a maximum rate of 60 cents. It is this deficiency payment which is determined by using the market price for the entire marketing year. As the law stands now, farmers must wait until June or July 1987 to receive this second payment on a crop that is harvested, in Oklahoma, in May 1986. For wheat, the marketing year ends in May the year after the crop is harvested. When this provision was included, obviously little thought was given as to the effect this would have on producers' income and their ability to pay their operating loans or their ability to cash-flow.

American farmers are having a very difficult time generating enough cash to meet their current expenses right now. If they cannot get all of their deficiency payment until the summer of 1987, many will be unable to raise enough cash to continue operating due to the fact that they will not be able to produce a financial statement which cash-flows this year. Farmers need to receive their payments in a prompt manner; they cannot afford to wait an entire year to be paid for their crop. Creditors will be hesitant to provide a farmer money for the 1987 crop if the farmer cannot pay off his loan for the 1986 crop.

Mr. President, this problem is very serious. There could be many producers forced out of business simply because of the provision contained in the 1985 Act.

It is true, we adopted the same provision in the farm bill for corn. However, corn producers are not faced with the problem encountered by wheat producers. A corn farmer's balance sheet and his ability to cash-flow will not be changed if he receives the balance of his deficiency payments 12 months after the marketing year begins or 5 months after. This is because the marketing year for corn begins on September 1 and ends on August 31. If the payment is based on the first 5 months of the marketing year, they get their payment in February. If the payment is based on the full 12 months of the marketing year, they get the payment 7 months later, in October of the same year. The corn farmer's cash-flow statement remains the same for that calendar year.

Wheat producers, on the other hand, are affected because the wheat marketing year begins on June 1 and ends on May 31. This means that if the payment is based on a 5-month average, the producer gets the money in November of this year. If the payment is based on a 12-month average, on the other hand, the producer will not get the payment until July of the next year. This creates a shortfall for the current year. For wheat producers, unlike corn producers, there is a cash-flow problem.

The amendment we are considering today will correct this problem by requiring that all deficiency payments be determined on the basis of the average market price received during the first 5 months of the marketing year instead of the entire marketing year, unless the producer chooses to receive the payment next year. This modification would only affect the 1986 wheat crop. The amendment does not modify the farm bill with respect to future crops.

As I stated earlier, this amendment will not cost the Federal Government 1 cent. Without its adoption, on the other hand, it will place a tremendous burden on the wheat farmers of our Nation.

At the suggestion of the ranking member of the Senate Agriculture Committee, I have modified my amendment to include a provision which would enable producers of alfalfa and other multiyear grasses and legumes to bid such planted acres into the Conservation Reserve Program.

Alfalfa and other similar multiyear grasses and legumes are not currently eligible for entry into the Conservation Reserve Program. Yet, at the same time, they are not exempt from the swampbuster and sodbuster provisions contained in the 1985 farm bill.

As many of my colleagues are aware, alfalfa is a perennial crop and it is therefore quite common for farmers who rotate their field crops with alfalfa to leave their ground in alfalfa for the productive life of the plant. This can be 5 years or longer.

Because of this, an alfalfa producer in a 5-year rotation with alfalfa planted in crop years 1981 through 1985 with the intention of planting field corps in the years thereafter, is ineligible to place his land into the Conservation Reserve Program. However, a farmer who produced a more highly erosive crop would be eligible.

This provision would enable alfalfa producers to bid their planted acres into the conservation reserve.

I understand that Senator ZORINSKY has discussed this provision with the Department of Agriculture and the Department has to object to its inclusion in this amendment.

Mr. President, both of these provisions are extremely important and I urge my colleagues to support this amendment.

WHEAT DEFICIENCY PAYMENTS

Mr. DOLE. Mr. President, I join the distinguished Senator from Oklahoma in introducing this amendment today. We are attempting to utilize a unique opportunity to help wheat farmers during this time of financial stress facing many in agriculture. This amendment will provide wheat farmers 60 cents per bushel this year by advancing the balance of their deficiency payment from the end of the marketing year, June 1987 to December 1987.

Traditionally farmers have been able to get their deficiency payments 5 months after the beginning of the marketing year, usually around November or December. The 1985 farm bill requires deficiency payments to be made based on the 12-month marketing year price if that price is higher than the effective loan rate. Previously, farmers received deficiency payments based on the average market price after the first 5 months of the marketing year.

The payment would be made during the same fiscal year and we have been advised by the Congressional Budget Office that there would be no costs involved.

The 1985 farm bill provides producers a regular deficiency payment calculated as the difference between the target price, $4.38, and the established loan rate, $3, or the market price, whichever is higher. The Secretary has the discretion to reduce the established loan rate 20 percent—the so-called Findley amendment—to make U.S. products more competitive in world markets.

Since the Secretary has used this discretion for the 1986 wheat program, creating an effective loan rate of $2.40, wheat producers are entitled to a second payment based on the difference between the statutory loan rate and the higher of either the discretionary loan rate or the average market price based on the 12-month marketing year. In this case, the difference between the statutory loan rate and the discretionary loan rate equals 60 cents per bushel.

Mr. President, we are able to advance the 60-cent payment in this fashion without cost because the season average price—based on the 12-month marketing year—and the estimated market price after the first 5 months of the marketing year are expected to be below the effective loan rate, meaning the effective loan rate will determine the maximum amount of this year's deficiency payment.

Mr. President, by providing farmers with their deficiency payment this year, instead of a full year after they harvest their crop, we will help many farmers overcome a major obstacle—generating sufficient cash-flow to continue their operations. We have made this at the producer option to ensure there are no adverse tax consequences. I would urge my colleagues to support this practical, budget neutral step toward ensuring the well-being of many family farmers.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment in the second degree.

The amendment in the second degree (No. 3201) was agreed to.

Mr. COCHRAN. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment as amended? If not, the question is on agreeing to the amendment in the first degree.

The amendment (No. 3200), as amended, was agreed to.

Mr. COCHRAN. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE. 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. JOHNSTON. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

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

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending matter be temporarily laid aside in order that I may propose an amendment on behalf of Senator THURMOND, which has been cleared.

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

AMENDMENT NO. 3202

(Purpose: To waive, for fiscal year 1987, a provision in section 603 of H.R. 5294 in the case of Erna Avari Patrick of Columbia, SC)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk on behalf of Senator THURMOND and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. THURMOND, proposes an amendment numbered 3202.

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

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

The amendment is as follows:

On page 7, line 18, immediately before the period, insert the following: ", except that in the administration of the provisions of section 603 of H.R. 5294, during fiscal year 1987, Erna Avari Patrick of Columbia, South Carolina shall be considered to have satisfied the requirement of clause (3) of such section".

Mr. THURMOND. Mr. President, I offer an amendment today to the continuing appropriations resolution that is of a private relief nature. In South Carolina, a recently graduated, young attorney who is a citizen of India has an opportunity for a 1-year clerkship with a Federal district court judge, but is unable to clerk because of the provision in the Treasury appropriations bill that does not allow funds to be paid to non-U.S. citizens.

This attorney is married to a U.S. citizen and has recently applied for her U.S. citizenship. She fully intends to become a citizen, but she cannot do so until a family probate matter in India is settled. I have received letters from two prominent judges in South Carolina vouching for her character and supporting this amendment.

My amendment would deem her to have satisfied this provision and would allow her to immediately begin her clerkship. This amendment is only necessary until the time that she is granted U.S. citizenship.

Mr. JOHNSTON. Mr. President, this amendment is being offered on behalf of Senator THURMOND. It provides private relief for a young attorney recently graduated who has the opportunity of a 1-year clerkship with a Federal district judge. The law provides that non-U.S. citizens cannot receive Treasury appropriations. The attorney is married to a U.S. citizen, has recently applied for her U.S. citizenship but pending that time Senator THURMOND feels, and we agree, there is no reason to not allow her to proceed to receive the clerkship, and this will make that possible.

The PRESIDING OFFICER. Is there further debate?

Mr. HATFIELD. It is clear on this side.

The PRESIDING OFFICER. There being no further debate, the question is on agreeing to the amendment of the Senator from South Carolina [Mr. THURMOND].

The amendment (No. 3202) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

The bill clerk proceeded to call the roll.

□ 1550

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

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

PROGRAM

Mr. DOLE. Mr. President, a number of my colleagues have been asking about the schedule for the next 2 or 3 weeks, and I thought I would just take next week first.

On Monday, we will probably convene at 11 o'clock or noon. There are special orders. There are a number of items we will have before us.

There will be FIFRA, S. 2972. We expect only one vote on that measure. S. 2045, CFTC—we hope that can be done by unanimous consent.

We hope to dispose of the Superfund conference report today, which is a major piece of legislation. Many Members would like to vote on it today. I think it is important that we do vote on it today, so that the administration will understand how strong support for Superfund is, because I have heard that they might be thinking of other ways to do it.

There will be conference report on Monday on intelligence authorization. That will not require a vote.

Other measures are bankruptcy, Export-Import Bank, technology transfer, and the handicapped bill.

I doubt that items on the Executive Calendar will require rollcall votes.

So I think it is safe to say that on Monday we can be very productive and not be in late. We might have one, possibly two, rollcall votes. I have been asked that there be no rollcall votes before 2 o'clock, and I believe we can honor that request—that is, if we can dispose of Superfund today.

So far as the pending measure is concerned, we have only two items remaining. We are negotiating with Senator MELCHER.

We have the Philippines amendment, and we hope to have a bipartisan leadership amendment. We have a drug fund amendment, and final passage. We should be able to complete action on this bill before 5 o'clock.

I hope that Superfund can be disposed of with a minimum of debate and with statements put in the RECORD, and then have an almost immediate rollcall vote on the Superfund conference report. If we can do it today, it would be very helpful.

We should be able to complete all our business no later than 5:15 or 5:30, except for wrap-up. There will be no additional votes after that.

Mr. METZENBAUM. Mr. President, if the Senator will yield, I just want to say that we had thought we might get out by 4 o'clock. I do not have to leave, because my wife is here; but I know that a number of Members do have a problem. I would appreciate the cooperation of the leader, and hope he will try to expedite it so that we can get out at 5.

Mr. DOLE. Right now, there is a Democratic caucus on the Philippines, and as soon as that is completed, we will be ready.

Mr. BENTSEN. Mr. President, will the majority leader yield for a comment?

Mr. DOLE. I yield.

Mr. BENTSEN. It is my understanding that the majority leader had asked that we be prepared to proceed with Superfund—we are prepared on this side of the aisle—and that we would agree to 30 minutes, 15 minutes on a side. On this side, we are prepared to do that.

□ 1600

Mr. JOHNSTON. 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. DOLE. 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. DOLE. Mr. President, in order to expedite the business for everyone—I know a number of people here are anxious to leave—I think it has been cleared on both sides to bring up the Superfund conference report. Is that all right?

Mr. BENTSEN. Yes.

I say to the distinguished majority leader that on our side it has been cleared for Superfund to be brought before us.

SUPERFUND AMENDMENT AND REAUTHORIZATION ACT—CONFERENCE REPORT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now proceed to the conference report to accompany H.R. 2005 Superfund, that it be considered under the following time limit: 30 minutes on the conference report to be equally divided—it does not all have to be used—between the chairman of the Committee on Environment and Public Works, Mr. STAFFORD, and the ranking minority member, Mr. BENTSEN, and in addition to the Senators from Oregon, Senator PACKWOOD, and the Senator from Louisiana, Mr. LONG, but the Senator from Texas and the Senator from Vermont would be in charge of the time; following conclusion or yielding on the debate itself, that the yeas and nays be ordered, and that the vote occur immediately following final passage of the continuing resolution.

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

Mr. DOLE. Mr. President, I submit a report of the committee of conference on H.R. 2005 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, have met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD of October 3, 1986.)

Mr. DOLE. 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, the vote will now occur on the Superfund conference report immediately following the vote on the continuing resolution.

The PRESIDING OFFICER. That is correct.

Mr. STAFFORD. Mr. President, as chairman of the Committee on Environment and Public Works, I can say that there were times in the long and difficult period when we were developing the Superfund legislation, which is now before us, there were times when we were getting it through the Senate and especially there were times in the long and difficult committee of conference between the House and the Senate that it seemed to me we might not achieve what we finally have.

So I am particularly gratified and in fact elated that we have finally brought a conference report signed as far as I know by all of the conferees for the Senate before this body this afternoon.

At this point I am very happy this is a good bill and will naturally expand our efforts to clean up hazardous waste sites around this country. It will not add to the national deficit or debt because it will be a self-sustaining fund for the most part.

AN EXPLANATION OF SOME PROVISIONS

Mr. President, I am gratified that the Senate is finally able to turn to

this legislation. At this point, we cannot be sure whether this or any other provision related to Superfund will become law during this Congress. For the sake of the hundreds who have worked on this legislation, and the millions who are to protected, I hope it will be enacted. But, in all honesty, that it is merely hope at this point.

Should this bill be taken up and become law, some of its provisions require further clarification. The purpose of this statement is to, at least hopefully, provide some of that clarification. While this Senator was only one member of the Conference Committee, he faithfully attended all of the Conference Committee meetings and all but one of the so-called subgroup meetings. I do not believe any other member of the conference can make this statement.

Based on my participation in all of those many meetings, accumulating untold hours, I would like to explain some of the bill's provisions.

SECTION 104(B) & (E)—REMOVALS

Under the current Superfund program, responses are divided into two separate categories: short-term removal actions and long-term, permanent remedial actions. The basic distinctions between the two categories are time and money. Removal actions under current law generally last less than 6 months or cost less than $1 million, unless the President finds that more of either is necessary to mitigate an emergency. Remedial actions, on the other hand, are taken at national priorities list sites and can involve years of work and tons of millions of dollars in cleanup costs.

During the reauthorization process, the administration requested that the limits on removal actions be relaxed from 6 to 12 and from $1 million to $2 million. This is to increase flexibility in conducting short-term responses because often they become more expensive then originally anticipated. The bill makes this change, and also adds a new criterion for exceeding these limits—that is whether "continued response action is otherwise appropriate and consistent with the remedial action to be taken."

There are two important ramifications of labeling a cleanup as a removal and not a remedial action. The standards and procedures of section 117—regarding public participation—and section 121—regarding cleanup standards—apply only to remedial actions. The rationale for this selective application is that short-term, relatively low-cost activities of great urgency should be free of the delays attendant to the requirements of sections 117 and 121.

In granting the flexibility to apply increased limits in structuring emergency removals, and granting exceptions even to those limits in unusual cases, we do not intend to encourage any shift in the focus of the program toward such activities. Removals should remain interim and relatively short-term and inexpensive actions or urgent responses which consume a small portion of Superfund resources. The new, more flexible authority is not to be abused to circumvent the more rigorous and explicit requirements regarding public participation and health standards. Finally, while the President is accorded greater flexibility in undertaking removals, the law's fundamental requirement that human health and the environment be protected must nonetheless be satisfied. The flexibility is merely procedural in nature, not substantive.

SECTION 105/SITE ID AND NATIONAL CONTINGENCY PLAN REVISION

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 requires all past and present owners, as well as, operators and transporters of hazardous substance facilities to notify the Administrator of the Environmental Protection Agency [EPA] regarding the existence of such facilities. Penalties are imposed for failure to comply with these requirements. The administration enlisted the States to assist in the site identification effort. At the end of the first 5 years of the program, it was estimated that some 25,000 sites would be identified nationwide; about 20,000 sites were included on comprehensive environmental response, compensation and liability information system [CERCLIS], the computerized data base used to store information on all known hazardous substance facilities.

Although the CERCLIS list is asserted to represent a comprehensive inventory of all known sites, the General Accounting Office [GAO] has reported that the potential universe of Superfund sites in fact could be much larger then previously acknowledged, and could include some 378,000 facilities. The GAO report concluded that relatively little emphasis has been given to site discovery. Aside from the initial effort in 1982 which uncovered most of the sites on the current inventory, the Federal Government has relied primarily on local governments and the public to discover new sites. It has not conducted any other systematic discovery effort. According to the GAO report, the Environmental Protection Agency has acknowleged that a targeted, systematic discovery effort combined with a change in program emphasis toward cleaning up sites that have not yet received sufficient attention, could increase the number of sites well beyond the 25,000 figure. For example, the Environmental Protection Agency acknowledged in the report that there are some 34,000 to 52,000 municipal landfills and some 9,770 to 63,770 mining waste sites that have not yet been listed or evaluated under the Superfund Program.

The Congress places the highest priority on improvement of site identification efforts. No changes in current law are made by the legislation regarding the site identification effort because such changes are unnecessary. CERCLA contains both the authority and the mandate to improve efforts in this area. The conference report accompanying SARA expresses the congressional expectation that between 1,600 and 2,000 sites will be placed on the national priorities list by 1988. An improved site identification effort is the logical corollary to this goal.

This bill does allow for changes in the process for evaluating Superfund facilities once they are identified. These changes, contained in section 105 of the legislation, require EPA to reassess the hazard ranking system [HRS] in order to address several problems brought to the Congress's attention during the reauthorization process. These problems include:

The current HRS, known commonly as the "Mitre Model", does not include a factor evaluating potential or actual contamination of the human food chain by releases of hazardous substances. Such contamination can pose a greater threat to human health than virtually any other type of contamination, other than contamination of household water supplies. When revising the system to take such contamination into effect, EPA should also consider food chain contamination that has an adverse impact on other aspects of the environment, including contamination of wildlife food chains.

The current "Mitre Model" also contains an anomaly in its treatment of air emissions from Superfund sites. If and when actual measurements of such emissions exists, the model scores them as a threat to human health. but if no measurements happen to have been made of such emissions, the model ignores them in its ranking of the actual or potential hazards posed by the site. Any revisions are to address this problem.

The current model also fails to adequately address contamination of surface water by point and nonpoint sources. The legislation requires that the HRS must be revised to consider human health risks associated with actual or potential contamination of surface water used for recreation or potable water consumption from such sources. In undertaking this revision, the legislation explicitly directs the President to consider possible downstream contamination of drinking water supplies.

The revisions in the HRS required by the legislation reflect one major theme which will become increasingly important during the next 5 years of the program: How to define the pa-

rameters of a Superfund site geographically on the basis of suitably comprehensive information regarding the nature of actual or potential contamination at the facility.

During the first 5 years of the program, EPA has in some cases defined sites broadly, to cover large geographical areas, and in other cases defined sites narrowly, to exclude potential downstream on offsite contamination. The problem with defining sites too broadly is that data regarding the sources of contamination at such large facilities often become confused, leading to disputes over whether operating industrial plants are causing the contamination. The problem with defining sites too narrowly is that a subsequent cleanup could ignore contamination that has spread beyond the boundaries of the facility.

In grappling with these admittedly difficult issues, the President should err in the direction which assures all actual and potential hazards are addressed. Aggressive and complete use of Superfund enforcement authorities would ensure that the Federal fund does not subsidize cleanup costs created by viable industrial entities. Releases under media-specific laws—for example the Clean Water Act—are also subject to CERCLA requirements. If the imposition of civil or criminal penalties, issuance of section 106 orders, application of section 121 standards or utilization of any other CERCLA or SARA authority would make for better or faster cleanups, then such provisions should be used.

SECTION 110—HEALTH STUDIES

One of the most significant but, remarkably, least controversial of the provisions in this bill is an elaboration of the health authorities contained in section 104(i) of existing law.

In addition to making the authorities of existing law somewhat more precise, the bill imposes some explicit requirements on the Administrator for the Agency for Toxic Substances and Disease Registry [ATSDR]. To assure that all of these authorities, old as well as new, are implemented at least minimally, this bill requires the Agency to be provided directly with not less than $50 million per year. This funding is in addition to any sums required for site-specific responses and is to be provided directly to ATSDR. It is not to be submitted to or through the Environmental Protection Agency, nor is it subject to any controls whatsoever by that Agency or its officials. ATSDR is independent of and coequal to EPA. The Administrator of ATSDR may consult with the Administrator of EPA where, in the judgment of the former, such consultation is appropriate or required by law. But the minimum sum provided by this bill to ATSDR is for implementation of that Agency's own authorities under Superfund, which are different in character from those of EPA.

Direct funding is required because of the demonstrated hostility towards ATSDR which exists in the executive branch. Indeed, the Agency was created only after a law suit was filed to enforce the requirements of 104(i). Even after the Agency was created, budget requests were reduced time after time prior to submission to the Congress. In each year, the Congress was forced to increase the budget request and instructed that the appropriation be provided directly to ATSDR.

The most important of the nondiscretionary duties imposed on ATSDR—in consultation with the Environmental Protection Agency—are the requirements that toxicological profiles be prepared for the hazardous substances found most frequently at Superfund sites and that health assessment studies be conducted at all sites on the national priorities list. The legislation establishes deadlines for these requirements, and any failure to meet a deadline would be subject to immediate citizens' suits under section 310 of the act.

In preparing toxicological profiles and health assessments the agencies should accumulate as much information as possible within the mandated timeframes, issue the profile or assessment on schedule, and then update or revise it as necessary. Supplemental requirements of the legislation—for example, peer review—does not excuse delay or deadline noncompliance issuance of the information required within the timeframes required.

The elements of a health assessment include: first, information necessary to ascertain the magnitude, scope and duration of the exposure of individuals to the hazardous substance or substances at issue, including the source and degree of ground or surface water contamination, air emissions and food chain contamination; second, an identification of all those in the community who might be exposed to the release of hazardous substances; third, toxicological and epidemiological evaluations of the impact of the exposure on affected individuals; and fourth, any other necessary medical testing of individuals.

This is not an exhaustive or exclusive list and ATSDR and EPA should explore additional areas and gather more information where appropriate. The agencies retain the flexibility to exceed the basic requirements of the bill in developing useful and complete health assessments. However, compliance with the minimal requirements and deadlines is nondiscretionary and thus enforceable through the citizens' suits provisions.

If a health assessment indicates that there is a significant risk to human health, the President is required to take such steps as are necessary to eliminate or substantially mitigate such risk. The risks contemplated by this provision include both actual and potential, acute and chronic health effects. The steps which must be taken to eliminate or prevent such risks include, but are not limited to, the provision of alternative drinking water supplies or the temporary or permanent relocation of individuals. The President has the flexibility to take whatever action may be necessary to eliminate or prevent the risk as quickly as possible. In many instances, provision of alternative household water supplies may be the most effective solution, but in some circumstances, relocation may be the only effective alternative. In addition to the steps specified, other actions—such as the decontamination of soil—may prove most effective in fulfilling the primary goal of eliminating significant risk.

In the context of considering what steps to take to eliminate or prevent actual or potential adverse health effects, the legislation permits ATSDR to consider additional information on the risks to the potentially affected population from all sources of hazardous substances, including known point or nonpoint sources other than the facility in question. The purpose of this authority is to enable the Agency to fully evaluate the most effective steps to eliminate or prevent adverse health effects. If contamination arises from other sources, in addition to those studied in the assessment, ATSDR or EPA may need to take steps under other provisions of law to deal with such contamination. The provision does not require a comparative risk assessment nor it it a reason to preclude or delay action while any or all other sources of contamination are studied.

Similarly, the legislation requires that whenever ATSDR determines to conduct a full scale or other study of health effects for selected groups of affected individuals, the letter of transmittal of such study shall include as assessment of risk factors, other than the release, that may be associated with any disease discovered, if such risk factors were not taken into account in the design of the study. Again, this provision does not require a comparative risk assessment or the determination of all other possible risk factors before completion of the full-scale study. It permits observations regarding other potential causes of the adverse health effects in order to assist those responsible for providing medical treatment to the affected population.

SECTION 113 PREENFORCEMENT REVIEW

One of the most important and difficult issues resolved by the conferees regards the timing of citizens' suits challenging decisions. Such suits would involve allegations that the

President or other officials have violated the cleanup standards or other requirements of the law and that public health or the environment would be threatened if the proposed action were undertaken or continued.

A major goal of the Superfund Amendments and Reauthorization Act of 1986 is to establish specific, uniform national health standards that will apply to cleanup decisions at Superfund sites. The Congress has been compelled to develop such specific standards because the executive branch failed to do so during the first 4 years of the program and ultimately issued a series of revisions to the national contingency plan which left far too many important cleanup decisions to the ad hoc judgment of individual employees in the field. Because of their to subjective nature, such decisions are intrinsically difficult to review, much less measure against the law's standard requiring all cleanups to protect human health and the environment.

The standards contained in the bill establish a series of nondiscretionary, minimum requirements which all Superfund responses must meet in order to assure the protection of human health and the environment. While the conferees fully expect officials of the Environmental Protection Agency and others to adhere to these standards, past experience has demonstrated that enforcement of such legal requirements by affected citizens' groups—acting as private attorneys general—is an essential component in the implementation of any such detailed statutory mandate. For this reason, section 206 of the bill establishs an independent citizens' suit provision under any section 310 of the act.

It is crucial, if it is at all possible, to maintain citizens' rights to challenge response actions, or final cleanup plans, before such plans are implemented even in part because otherwise the response could proceed in violation of the law and waste millions of dollars of Superfund money before a court has considered the illegality. Delay also places courts in the undesirable position of deciding whether to order an expensive corrective action which the executive branch or responsible parties will, by definition, be attacking as either excessively costly or unnecessary because the violations are trivial.

Hypothetically, for example, the President might yield to the pleas of responsible parties and decide to ignore readily available permanent treatment technologies—for example incineration—in direct violation of the law's requirements, choosing instead to cap a site. Compelling a selection of the legally required remedy could, in a case like this, save time, money, and perhaps lives.

Concerns have been expressed throughout the reauthorization process that potentially responsible parties, in the guise of aggrieved citizens, might also take advantage of such opportunities for judicial review. If these fears were realized, such specious suits would slow cleanup and enable private parties to avoid or at least delay paying their fair share of cleanup costs.

To avoid such results, the courts must draw appropriate distinctions between dilatory or other unauthorized lawsuits by potentially responsible parties involving only monetary damages and legitimate citizens' suits complaining of irreparable injury that can be only addressed only if a claim is heard during or prior to response action.

When the essence of a lawsuit involves contesting the liability of the plaintiff for cleanup costs, the courts are to apply the provisions of section 113(h), delaying such challenges until the Government has filed a suit. Compliants should be examined to preclude efforts to present such cases as "citizens' suits" challenging illegal response action. The crucial distinction between these two types of suits is that plaintiffs concerned with the monetary consequences of a response can be made whole after the cleanup is completed by reducing the amount of the Government's recovery. But citizens asserting a true public health or environmental interest in the response cannot obtain adequate relief if an inadequate cleanup is allowed to proceed and, in effect, create a nuisance or a violation of this or other laws. Delay in the timing of suits seeking monetary damages does not diminish the court's ability to grant later and adequate relief. However, delay in the timing of suits seeking an equitable order modifying the proposed response action would undermine the court's ability, either legally or practically, to grant adequate and timely relief at a later date.

Mr. President, whenever major legislation is brought before the House or Senate, special interests seek to include in the floor statement of one Member or the other language which they can later use in lawsuits. Superfund seems to have been especially succeptible to this.

I ask unanimous consent to have printed in the RECORD at this point a case example of this. It is a letter from an officer of the Chemical Manufacturers Association to an official of the Department of Justice. It is self-explanatory.

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

CHEMICAL MANUFACTURERS ASSOCIATION,

August 7, 1986.

NANCY FIRESTONE, ESQ.,
Department of Justice,
Land and Nature Resource Division,
Washington, DC.

Re: CERCLA Administrative Record Provision.

DEAR NANCY: In lieu of trading phone calls anymore, I am enclosing for your review a proposed colloquy on the applicability of the CERCLA administrative record provisions to pending litigation. We will be discussing this language with Jan Edelstein, Janet Potts and Diana Waterman. I would appreciate your comments at your earliest convenience.

Thank you for your cooperation.

Yours truly,

BARBARA A. HINDIN,
Assistant General Counsel.

DRAFT COLLOQUY ON RETROACTIVITY OF CHANGES TO JUDICIAL REVIEW PROVISIONS OF SECTION 113(j)(1) AND 113(k)(2)(C)

Question: I wish to clarify how the changes in the provisions of the law governing judicial review of cost recovery decisions are intended to apply to pending cases seeking judicial review of past EPA decisions. My concern is that we not prejudice parties currently seeking review, offend principles of due process or fail to pay proper attention to separation of powers limitations.

First, I ask my distinguished colleague to confirm that we intend that these judicial review provisions be applied consistent with principles of due process and that such principles are not in any way diminished by the failure to mention due process in section 113(j)(1) of the bill.

Answer: The gentleman is, of course, correct that principles of due process of law apply. The bill's reference to "otherwise applicable principles of administrative law" is not in any way intended to undermine the applicability of the guiding principles of fundamental fairness embodied in our due process guarantees.

Qustion: Among those due process principles, we include the doctrine of "manifest injustice," the recognized exception for not applying legislation retroactively to affect pending cases, do we not?

Answer: Again, the gentlemen is correct.

Question: So that, in circumstances where parties had acted and proceeded in reliance on prior law and procedures and their conduct would have been different if the present law had been known and the change in law foreseen, or where the new judicial review provisions would defeat the reasonable expectation of the parties, or where application of the new provisions to a pending proceeding would be unfair, a court may consider whether application of the judicial review sections of the bill to a pending case would itself be inequitable, arbitrary or capricious.

Answer: That is correct.

Question: Would the distinguished colleague also agree that "otherwise applicable principles of administrative law" include the principle that the record may be supplemented with new evidence not reasonably available when the administrative record was developed?

Answer: Again, I concur and assure the gentleman that all such principles of administrative law are intended to be considered by the courts. The particular principle he notes was also referred to in the report on this bill by the Committee on the Judiciary of the House. The slight change in language

in the Conference Report does not signal exclusion of these principles.

Question: So traditional concepts are intended to govern whether discovery during the review proceeding is needed in order for the reviewing court, among other things, to verify the completeness of the administrative record, to define the "whole record" compiled by the agency, to identify and examine oral communications not reflected in the written record.

Answer: That is right.

Question: And general administrative law principles are to control whether the court should receive supplementary material to explain or clarify the record, to help the court determine whether the agency considered all relevant factors, or to provide necessary background materials for the court so that it may understand complex issues in order for the court to be able to fulfil its review function.

Answer: That is also correct.

Question: Finally, I direct the manager's attention to a late addition in the Conference Report about which I am most concerned, section 113(k)(2)(C) of the bill. This language about what constitutes the administrative record until such time as the President promulgates regulations to govern proceedings on which to base selection of a response action cannot be meant to straitjacket courts in pending cases. If parties are already contesting the fairness and adequacy an EPA-selected response action on the basis of a fatally flawed administrative proceeding and record, then we should not, consistent with principles of due process and separation of powers, tell the court how to decide the issue. That language is intended to provide short-term, interim authorization to the President to proceed with no actions, rather than to shackle the courts' judicial determination of already pending review issues, is it not?

Answer: That is correct, we are not telling the courts how to decide any ongoing challenge but, instead, providing the President with express authority to make new decisions and develop administrative records without having to delay in order to promulgate comprehensive regulations first.

I thank my colleague for his cooperation.

Mr. STAFFORD. Mr. President, I do not wish to belabor this matter and, for that reason, will not dwell on the detailed points which this letter attempts to make on behalf of the chemical industry. I trust that if Members, or judges, encounter this language elsewhere they will know of its origin and take that into account. I am inserting this in the Record solely for such purposes and do not in any way, agree with or endorse its content.

I would, however, like to make one observation. A question which has been raised several times is whether a responsible party can hang back from the administrative proceeding because it wishes to avoid publicity or liability, trusting that another will adequately represent its point of view, then later intercede should that have failed to happen. The answer is no.

These companies and individuals have an obligation to come forward and present their best arguments and the evidence which best sustains those arguments. It a potentially responsible party chooses to avoid the risks associated with participating in the administrative proceeding, than it must bear the risks of having made the choice. If the record is inadequate with respect to that particular party or the decisions are somewhat unfair, that is a consequence of deliberate or negligent inaction. They can't have their cake and eat it too.

Indeed, a court should apply not merely principles of law, but equity as well. One guideline should be to view less favorably the arguments of those who failed to participate when they knew or should have known that they had an opportunity to do so. This is because in choosing to abstain from the administrative process such parties, through their own volition, prolonged and complicated a process intended to protect human health and the environment. Such conscious decisions to knowingly increase the risks associated with these poisonous chemicals, motivated by economic self interest or litigation strategy should cause a court to presume that the parties enter without clean hands.

Mr. President, I ask unanimous consent to have printed in the RECORD a colloquy on retroactivity of changes to judicial review provisions.

STATE NUISANCE LAW CHALLENGES TO EPA CHOICE OF RESPONSE ACTION

Mr. STAFFORD. Mr. President, I also would like to call the attention of the Senate to the interplay of two superficially unrelated provisions. They are section 113(c), which establishes a new 113(h), and 121(a), which adds a new section 121, subsection (d) of which is important to this discussion.

The time of review of judicial challenges to cleanups is governed by 113(h) for those suits to which it is applicable. It is not by any means applicable to all suits. For purposes of those based on State law, for example, 113(h) governs only those brought under State law which is applicable or relevant and appropriate as defined under section 121. In no case is State nuisance law, whether public or private nuisance, affected by 113(h). As the statement of managers makes clear—

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants or contaminants.

It will no doubt present a challenge to courts to determine what "actions"—I observe that this is not limited only to suits—are based on a "nuisance" theory and which are not. As the member of the conference committee who insisted upon stating expressly what all had agreed was their intent, I would like to provide some insight into the purpose and meaning of the provisions in sections 113, 121, and, to a lesser degree, 115.

First, the fundamental purpose is to preserve rights under nuisance law as it is defined under the relevant State law. The question of whether any given law is or is not "nuisance" is determined by reference to the laws, decisions and definitions within that State. It may well be that what one State calls negligence or trespass, another will call nuisance. It may also be that some line of nuisance law has been either codified or otherwise defined by the legislature and thus embodied in a statute rather than case law. That is, for example, the situation with respect to some Vermont laws.

The special status conferred upon State nuisance actions, permitting filing at any time, is an essential feature of the bill. There is a crucial difference between the relief sought by one claiming that an EPA-proposed remedy would constitute a nuisance. The PRP plaintiff can in most cases be made whole by relief after the fact—in the form of contribution, indemnity, or dismissal of EPA's enforcement action. The nuisance plaintiff is in an altogether different situation: his injuries are likely to involve threats to health, or use and enjoyment of land, or other quality-of-life factors. When such a plaintiff has reason to oppose construction of, say, a toxic waste incinerator as part of site response, only a court order blocking construction can provide just relief. Only a before-the-fact remedy can do the job.

Numerous legal scholars have lamented the lack of any universally accepted definition of the nuisance concept. Moreover, some State laws create nuisance-type offenses without actually employing the word. See, for example Vt. Stat. Ann. tit. 10, 6610, 6610a—abatement of imminent and substantial threats to public health. In light of this confusion, Federal courts may have different notions of what State nuisance law includes than do State courts. Making State court rulings binding on Federal courts as to what constitutes State nuisance law under CERCLA will ensure, therefore, that the full range of injuries against which States desire nuisance protection is considered by those who select Superfund site responses. The burden of cleaning up the Nation's toxic waste sites should not be placed on the backs of the innocent people who happen to live near those sites.

It is expected, of course, that State courts will apply substantive State law in making their determination. Allowing the meaning of "State nuisance law" to be construed according to State law does not compromise the questions. There is nothing to prevent Congress from articulating a Federal rule, as we do here, that courts are to be bound by State law in interpreting a Federal statutory phrase. Indeed, there is precedent for this event at the

constitutional level. See Ruckelshaus versus Monsanto, 467 U.S. 986, 1001 (1984)—meaning of "property" in fifth amendment taking clause).

Nuisance law encompasses public nuisance as well as private nuisance. While the two causes of action are quite distinct, each concerned with interests of the innocent public that must be protected at Superfund cleanup sites. Historically, the essence of a private nuisance was an interference with the use and enjoyment of land. Courts have found actionable interferences with this interest to arise from a variety of circumstances that might come about through a CERCLA response. Professors Prosser and Keeton, for example, list nuisance decisions based on interference with the physical condition of the land itself, as by pollution of an underground water supply, or based on unpleasant odors, smoke or gas, loud noises, and the threat of future injury. Prosser and Keeton, The Law of Torts 619-620 (5th ed. 1984). Moreover, several decisions show that nuisance actions are maintainable even though no use is being made of the plaintiff's land at the time.

Some courts no longer adhere to the requirement that private nuisance be predicated on an interest in real property or view such property interests broadly in order to extend the protective sweep of the theory. This approach is consistent with the purpose here of preventing injuries from occurring, rather than attempting the difficult, sometimes impossible, task of making a plaintiff whole with money, after the fact of an injury.

As I said earlier, the selection of site response is also subject to public nuisance actions. Public nuisance has been defined as "the doing of or failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public." *Commonwealth* v. *South Covington Railway Co.*, 181 Ky. 459, 463, 205 S.W. 581, 583 (1918). It is a much broader term than private nuisance and usually envisions but does not necessarily require enforcement by government rather than private individuals. It would indeed be anomolous if Congress were here to allow private nuisance suits, where injury is inflicted on only a few persons, but not public nuisance actions, where the injury affects the entire community. As with private nuisance, court decisions finding public nuisances include many that involve injuries of a kind not unlikely to occur from CERCLA site remediation. I refer to cases involving interferences with the public health, public safety, and public comfort.

The reference to nuisance law may well include statutory as well as common law. At one time almost entirely judge made, nuisance law today contains a large statutory component in every State of the country. This longstanding trend reflects the critical need of legislative clarification and predictability in an otherwise murky realm. There would be little logic or fairness, therefore, to allowing challenges to EPA's selection of a CERCLA response plan based solely on the common law side of State nuisance law.

Placing statutory nuisance actions under the umbrella of the nuisance law phrase is especially important in that a common type of nuisance statute takes the form of defining a particular act as a nuisance per se. These statutory definitions greatly alleviate the evidentiary burden on the aggrieved party, by dispensing with the need to prove the existence of a substantial and unreasonable interference with land, or an actual threat to the community health and comfort, in the particular case before the court. Such definitional provisions are found in every State—Prosser and Keeton, The Law of Torts 646 (5th ed. 1984)—and include definitions of acts as both public and private nuisances. Examples include Cal. Civil Code 841.4 (private nuisance), Pa. Stat. Ann. tit. 18, 6501(a)(1) (placing dangerous substance upon land of another defined as public nuisance); N.J. Stat. Ann. 2C:33-12 (public nuisance); and Cal. Pub. Res. Code 2558 (public nuisance).

State statutes also address other, nondefinitional aspects of nuisance. For example, statutes may permit private abatement of certain nuisances, upon proper notice. See, for example, Cal. Civil Code 3502-3503. And, of course, statutes are necessary to empower particular governmental agencies to bring prosecutions against public nuisances, and to specify particular monetary and injunctive remedies. See, for example, Pa. Stat. Ann. tit. 35, 6018.104.

Statutory nuisance laws in all the foregoing categories, as well as any others deemed appropriate by the State courts, are subsumed by the phrase "nuisance law."

A particularly instructive case of a State statute that embodies nuisance concepts, without express designation as such, occurs in my own State of Vermont. Vermont Acts 250, enacted in 1969, illustrates one kind of statute to be considered by courts as State nuisance law.

Vermont Acts 250 seeks to regulate large-scale land development with a view toward assuring, and I quote from the act, that "the lands and environment of the State * * * are devoted to uses which are not detrimental to the public welfare and interests." This statement of purposes might as well have been lifted from a hornbook chapter on nuisance law and the societal interests it protects.

More specifically, the Vermont law creates a State environmental board and district environmental commissions with power to regulate large-scale development under a comprehensive State land-use plan. In the absence of a permit, no person may sell an interest in any but the smallest subdivisions, or construct improvements occupying more than 10 acres or on mountaintop property of any acreage. Most important here, the statutory preconditions for permit issuance are an unmistakable echo of the findings often made by courts in nuisance suits. These include determinations by the board or commission that the proposed project will not: first, result in undue water or air pollution, second cause unreasonable soil erosion so that a dangerous condition results, or third, have an undue adverse effect on the scenic beauty of the area or on rare or irreplaceable natural areas.

Similar legislation governing the siting of large subdivisions and major development was enacted by the State of Maine. Site Location of Development Act, Maine Rev. Stat. Ann. tit. 38, 481-489. See generally Jackson, Development Legislation in Maine and Vermont, 23 Maine L. Rev. 315 (1971).

Mr. President, both the Vermont and Maine statutes were enacted to deal with adverse impacts on fragile natural resources due to development occurring where it should not. Such nuisance-type enactments, where applicable, can be used to challenge, before the harm is done, any ill-advised response actions chosen without full knowledge of local conditions.

In a sense, the codification by some States of their nuisance is unfortunate, because it may well complicate the task of courts in sorting those which are subject to 133(h) from those which are not. But the richness and diversity of these laws makes it impossible for the Congress to fashion a single definition which can be adequately describe every situation. Courts should be guided in their decisionmaking process by certain principles:

First, State laws, especially those which help prevent injuries from occurring rather than providing after-the-fact redress, should be accorded deference.

Second, more labels should not determine the outcome of any particular case. Courts should look behind the labels to the true interests sought to be protected, and to the complaints of the plaintiffs to determine what protection they are seeking.

Third, error should be on the side of preventing injury to innocent bystanders.

SECTION 119—RESPONSE ACTION CONTRACTORS

An important element of a successful Superfund Program is the develop-

ment of a private sector for cleanup services. Such services range from scientific and technical analysis of the problems at a site, through design and implementation of the appropriate remedy.

Over the past few years, the market for such services has developed relatively slowly. However, given the expansion of the program contemplated under the Superfund Amendments and Reauthorization Act of 1986 [SARA], there should be a rapid growth in both the number and size of the firms providing such services.

Unfortunately, as in any market where rapid expansion is spurred by a sudden and large infusion of funds, there may also be opportunities for abuse. The history of some Federal programs demonstrates the inflation of costs and diminution of quality that such circumstances can provoke. To minimize this possibility, it is essential to carefully weigh a variety of competing interests. The provisions of SARA regarding contractor liability and indemnification reflect such a delicate balancing.

At the outset of the reauthorization process, Members were confronted by predictions that the insurance for those engaged in the treatment, storage, disposal or cleanup of hazardous substances would disappear unless the Congress eliminated their liability under State or Federal law. However, no assurances were provided that such changes would necessarily result in either a reversal of the perceived insurance crisis, or the reinstatement of reasonable rates for readily accessible insurance policies. On the other hand, this Senator and others believed that changes in the State liability schemes would reduce contractors' incentives to exercise the greatest care and maintain quality, especially in a process influenced greatly by lowest cost bidding. There was powerful and adamant insistence, especially in the Senate, that the integrity of State laws, and the well-established Federal principle of preserving them, be maintained. This is particularly important in view of the premise of CERCLA, the Clean Water Act, the Resource Conservation and Recovery Act and other laws that those engaged in the business of handling toxic materials should do so at their own risk, knowing that they are subject to strict liability.

Section 119, as well as other provisons of the bill—for example, sections 208 and 210—reflects an effort to balance concerns about the actual or perceived insurance crisis against the need to maintain legal liability as an incentive to ensure high quality, safe work. It provides contractors with limited protection from liability under Superfund for nonnegligent misconduct. It also gives the President limited authority to indemnify contractors if all reasonable sources of private insurance are unavailable. The legislation does not affect in any manner liability imposed under State law, whether statutory or common, nor does it reflect a conclusion by the Congress that such laws should be changed to establish a rule of liability other than strict, joint, and several.

Indeed, the final issue resolved by the conferees was whether the statement of managers should include language expressing a congressional view that the appropriate liability standard at the State level is negligence, and urging States to amend their laws accordingly. The statement of managers contains no such suggestion, although I do not doubt that some persons may assert that there was an agreement to that effect. There was and is not any such agreement. Moreover, proposals to include manager's language urging the adoption of a negligence standard were expressly not agreed to by the conferees due to the deeply held conviction on the part of some that these matters should be left exclusively to the province of the States to decide, unswayed by congressional influence.

It is true that this bill reflects a change in the Federal liability under Superfund. But it is a change that was only reluctantly agreed to and then only after it had become clear that if, in fact, insurance were unavailable, all of the reauthorization efforts would have been for naught. It is a reality in the United States, unlike many other industrialized nations, that businesses refuse to expose themselves to what many would consider the ordinary risks of free enterprise. Businesses and their managers view liability insurance as a precondition to entering or remaining in markets including, unfortunately, Superfund responses. Thus, the Congress was in a sense held hostage by the threat that insurers would refuse to provide coverage. There really was no choice but to pay the ransom and change the Federal standard.

States, however, do have other choices. The insurance industry is regulated at the State level and therefore can be compelled to cooperate. It is possible to require assigned risk pools, regulate premiums, authorize new forms of self-insurance or otherwise respond to the insurance dilemma in some fashion other than altering liability. Of course, some legislatures may well conclude that a change in liability is itself an appropriate response, but they must then confront the equally difficult question of whether a victim should bear the costs of an injury caused by the contractor and, if so, why. The real issue in these cases is not whether it is fair for the contractor to bear the costs of injuring another during the course of a cleanup, but whether it is fairer for the contractor or the victim to do so. A victim's only connection with the poisonous chemical is that he or she was injured; the contractor, in contrast, chose voluntarily and for profit to hold itself out as competent to perform safety tasks that were classified in advance by the Federal Government as among the most difficult and dangerous in the Nation.

These questions of equity and liability are among the most intellectually and practically challenging that the Congress can ever encounter. The solution of one Congress can differ from that of another, just as the solution of a State legislature may differ from that of the Federal legislature. For that reason, it is inappropriate and unwise for a State to assume that the Congress is the fount of wisdom on this subject, to be followed blindly. I believed there are better solutions to this problem than those in this bill, and urge State legislatures to continue to search for them.

The provision applying liability under Superfund for negligent, reckless or intentional misconduct applies only to parties who have no connection to the facility other than as response action contractors. It does not affect liability for the activities of those otherwise liable under sections 106 or 107, even if such activities occur in the course of conducting a response action at a site.

The provisions authorizing indemnity for response action contractors are subject to the President's compliance with a series of threshold requirements. The legislation divides these requirements into two categories: first, those that must be met for every indemnification agreement signed under the act; and, second, those additional requirements that apply to indemnification agreements covering cleanup work done under contracts with private responsible parties, as opposed to Federal and State governments.

The general set of requirements applying to all indemnification agreements contains three components.

First, the President must determine that the liability covered by the indemnification agreement exceeds, or cannot be covered by private insurance available at a fair and reasonable price. The President must further determine that such insurance is not generally available to competitors of the contractor. Any individual firm's inability to find insurance therefore cannot justify use of the indemnification authority. Rather, the President has authority to grant indemnification only if insurance is not generally available to viable competitors of the contractor, on a marketwide basis, at a "fair and reasonable" price. Determinations of the fairness and reasonableness of the price of private insurance shall not be made on the basis that insurance costs are limiting profits that

might otherwise be achieved by the contractor. A price is to be judged unfair and unreasonale only if the costs of insurance are markedly disproportionate to the risk being assumed by the insurer. The comparative cost of insurance to other business expenses is irrelevant.

The President must also determine, prior to granting indemnification, that the contractor has made diligent efforts to obtain insurance coverage from non-Federal sources. This determination is closely related to the finding that insurance is not generally available to all those potentially capable of performing response action work; however, the "diligent efforts" showing imposes the burden of demonstrating such unavailability on the party seeking indemnification.

The third and final requirement is that, in the case of indemnification agreements covering more than one facility, the contractor must make a separate showing of diligent efforts to obtain non-Federal insurance coverage before it begins work at each individual facility.

The special requirements covering indemnification agreements at sites where the contractor is hired by potentially responsible parties include a determination by the President that the total net assets and resources of the potentially responsible parties are not adequate to provide indemnification. This requires a rigorous and comprehensive analysis of the financial status of such parties, and a determination that they are unable to provide all, or part, of the indemnification required. Complete Federal indemnification must be the only alternative.

Finally, before the Federal Government pays any claims under indemnification agreements at private sites, the contractor must have exhausted all administrative, judicial and common law remedies for covering indemnification claims against all other potentially responsible parties participating in the cleanup of the facility. The burden of proving that such remedies have been exhausted resides with the contractor.

Any indemnification agreement signed under the authority of Superfund must contain appropriate deductibles and limits on the Government's liability for claims, including both limitations on the dollar amounts to be paid and conditions affecting the obligation to pay claims such as compliance by the contractor with sound engineering practices.

Although the President has authority to enter into indemnification agreements for cleanup at federally owned or operated facilities, claims paid under such agreements can never be made out of the hazardous substance Superfund but must instead be paid by the agencies themselves, as required under sections 107(g) and 111(e)(3).

The primary purpose of Superfund is to minimize releases of toxic chemicals. This is achieved by establishing a standard of liability only marginally short of absolute based on the conviction, now confirmed by experience, that this will induce the highest standard of care. Erosion of liability, whether through indemnification or otherwise, increases the probability that care will be lessened proportionally. Therefore, the fund is to be used to provide indemnification only when no other option is available to achieve cleanup.

SECTION 120—FEDERAL FACILITIES

Since the original Superfund law was passed in 1980, Federal agencies and departments responsible for hazardous waste facilities have lagged behind the Environmental Protection Agency and the private sector in identifying and assessing dump sites in need of cleanup.

The General Accounting Office [GAO] estimated in April 1985 that there is an average of two to three potentially hazardous sites at each of 473 military bases across the country, for a total of some 800 to 1,400 military sites nationwide. These figures do not include sites operated by the Department of Energy [DOE], where radioactive and chemical wastes that were byproducts of the Nation's atomic weapons research and manufacturing programs are buried.

Although the 1980 Superfund law subjected Federal facilities to the same legal requirements as apply to private sites, the absence of aggressive enforcement by EPA and the Department of Justice [DOJ] have led to a Federal cleanup program that not only responds slowly and tentatively to the most notorious situations, but has yet to make a comprehensive effort to deal with other hazardous facilities.

The provisions included in section 120 of the Superfund Amendments and Reauthorization Act of 1986 are designed to institute fundamental reforms of the Federal facilities cleanup effort in three key areas.

First, the amendments make it clear that the Environmental Protection Agency has final authority over other Federal agencies' or departments' compliance with the law. By giving this authority to the agency currently responsible for implementing Federal environmental programs, we assure that the cleanup effort at Federal facilities is both adequate and consistent with parallel efforts at privately owned or operated sites.

Second, the amendments require a comprehensive nationwide effort to identify and assess all Federal hazardous waste sites that warrent attention. Using as a base the inventory required under the Hazardous and Solid Waste Act Amendments of 1984, the legislation requires EPA to assess such sites in the same manner that it assesses privately owned or operated facilities. The legislation further requires that any Federal facility that meets the criteria applied to private sites listed on the national priorities list [NPL] must be placed on the NPL. Although Superfund money cannot be spent to clean up such facilities, their placement on this list will help assure that compliance with the law's standards is achieved by the Federal Government in an effective and timely manner.

Third, the amendments set forth timetables both for the formulation of cleanup plans and for the initiation of cleanup at all Federal facilities qualifying for listing. The amendments reiterate existing law that all cleanup standards and other legal requirements—except as specified—apply to Federal facilities in the same manner as they apply to private sites. Timetables, standards and requirements are enforceable under the citizens' suits provisions of the legislation as nondiscretionary duties of the Federal Government.

The Superfund Amendments of 1986 establish special rules and procedures for the application of State environmental and health laws to facilities on the NPL, including Federal facilities. For all other Federal facilities the legislation does not diminish the application of State law nor does it preempt State law in any way. A State cannot, however, single out only Federal facilities by creating special rules for them that are not otherwise applicable to similar situations at private sites, and then expect these rules to be enforceable under Superfund. Such rules may, or course, be enforced under the State's own laws or, perhaps, other Federal laws, if this would otherwise be legal.

The hazardous waste compliance docket created by the legislation is to be a full and comprehensive inventory of all hazardous facilities in the country, including releases required to be reported under section 103 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA].

The Administrator of EPA is responsible for conducting preliminary assessments and then evaluating all facilities included on the hazardous waste compliance docket. The costs of such assessments and evaluations are to be paid by the Federal agency or department responsible for the facility, as are the costs of preparing remedial investigations and feasibility studies, conducting other necessary studies and, ultimately, cleanup of the facility. In carrying out its responsibilities, EPA must be scrupulous in assuring that Federal facilities are treated the

same as private facilities and are not given any special treatment.

Following the listing of a Federal facility on the national priorities list, the legislation requires that the relevant Federal agency or department enter into an interagency agreement with the Administrator for the completion of remedial action at such facility. Such an agreement must reflect the mutual agreement of the responsible Federal agency or department and EPA regarding what remedial action is appropriate for the facility.

Because interagency negotiations have too often become stalemated when the responsible agency has refused to comply with EPA's conclusions regarding the remedy needed to protect human health and the environment, the legislation explicitly gives EPA final authority to select a remedy over the objections of the responsible agency when necessary. This authority does not diminish the legal obligations of the responsible agency for assuring the cleanup is carried out in a timely and effective manner and, should citizens' enforcement action at the facility be taken, the responsible agency should be a primary defendant from whom relief is sought.

Finally, the legislation recognizes the reality that, only in unusual cases, the national security may require issuance of circumscribed Executive orders exempting a Federal facility from the requirements of the Superfund Amendments and Reauthorization Act of 1986. In all such cases, Executive orders should adopt the method of protecting legitimate national security interests that maximizes compliance with the environmental and health requirements imposed by the legislation. For example, it may be appropriate to require that all EPA employees reviewing cleanup plans obtain a national security clearance, but it would not be appropriate to exempt such plans from national cleanup standards simply because EPA employees are assigned to ascertain what standards should apply to the cleanup.

Mr. President, I would like to observe that this is one area where it should not have been necessary for the Congress to write new amendments to the law. Hopefully, there will come a day when the law will be implemented as the Congress intended and these provisions will become unnecessary.

In 1980, the Congress went to great pains to assure that the U.S. Government was treated, in all respects, like any other responsible party. The law's definition of a "person" accords no special treatment for the United States, and two other provisions, 107(g) and 111(e)(3), expressly prohibit. But no loophole, it seems, is too small to be found by the Federal Government.

In the Executive order implementing the 1980 law, its authorities with respect to Federal facilities were delegated to the heads of the Federal agencies. In the judgment of this Senator, that provision of the Executive order is illegal, but to the best of my knowledge it has never been challenged. Perhaps someday it will be and a court will read the clear mandate of the law and set aside the Executive order. Or, perhaps a revised Executive order will someday be issued.

In the meantime, Mr. President, these amendments make no change in the provisions of the 1980 law which I have just cited. They do not in any way, expressly or impliedly, sanction the Executive order or the conduct of the executive branch. The agencies of the Federal Government remain strictly, jointly and severally liable, and otherwise subject to the law just as if they were nongovernmental persons. These amendments merely reflect an acceptance by the Congress of the reality that, however illegal the actions of the executive branch may be, compelling its officers to undertake and implement cleanups must be the first priority.

SECTION 122—SETTLEMENTS

This section of the legislation is intended to encourage the Environmental Protection Agency [EPA] and other agencies responsible for implementing the Superfund Program to increase their efforts to impose the burden and costs of cleanups on responsible parties through the use of settlement agreements. When the administration presented its Superfund reauthorization proposal to the Congress in February 1985, EPA Administrator Lee M. Thomas stated that EPA intended to ensure that private parties pay for and perform at least half of the cleanup work at Superfund sites. The funding level established by the Superfund Amendments and Reauthorization Act of 1986 [SARA]—$8.5 billion for basic site cleanup—reflects this assumption.

If half the responses are to be paid for directly by private responsible parties, the timing and magnitude of settlement and enforcement efforts becomes crucial. The Government's current enforcement program lags far behind the goal of private party cleanups at half of the Superfund sites, both in terms of the number and scope of the agreements that have been reached and in terms of the speed with which such agreements have been implemented.

Because of the weakness of the current enforcement program, section 122 clarifies and affirms the Government's enforcement authority by creating special procedures and timeframes for the negotiation of private party settlements. Section 122 contains these procedures, which are available to encourage more comprehensive, expeditious and adequate settlements. However, the use of the procedures is discretionary with the President—or a delegee—and a decision whether to invoke section 122 is not subject to judicial review. The additional litigation that would result if private responsible parties were allowed to challenge and litigate the decisions whether to use the procedures would serve only to further paralyze an already lagging enforcement effort.

The procedures contained in section 122 are premised on the current Superfund liability system, which imposes strict, joint and several liability on those found responsible under sections 106 or 107 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA]. Earlier versions of the legislation, including the reauthorization bill (H.R. 5640) passed by the House of Representatives during the 2d session of the 98th Congress, contained explicit restatements of this underlying liability. Such provisions were deleted from SARA because they are unnecessary, given the clear and correct body of case law that has confirmed and developed the doctrine of strict, joint and several liability under Superfund and section 311 of the Clean Water Act.

The importance of placing the settlement procedures established under section 122 in the context of Superfund's liability scheme cannot be overstated. Settlements are an alternative to full prosecution of strictly, jointly and severally liable parties and must always be evaluated in relation to the relief the Government could have obtained by litigating the case. Because Superfund imposes liability without regard to fault, and requires that when the harm is indivisible each party be jointly and severally liable for the full costs of cleanup, settlements for only a portion of cleanup costs must be measured against a high standard. Under a liability scheme as rigorous as that of Superfund, recoveries of amounts less than full costs are disfavored and are justified by only extraordinary circumstances.

Perhaps the best illustration of congressional expectations regarding the operation of the new provisions in the context of so-called mixed funding agreements.

The legislation confirms the President's existing authority to enter into "mixed funding" agreements, whereby the funds contributed by potentially responsible parties are supplemented by Federal Superfund dollars. The legislation also permits the President, in his or her sole discretion, to prepare a nonbinding preliminary allocation of responsibility dividing costs amount the potentially responsible parties even though they are jointly and severally liable under the law. But such allocations are to be used for settle-

ment purposes only and are never, under any circumstances, admissible in any judicial or other proceeding.

Both of these provisions reflect the reality that the Government will sometimes settle for less than full cleanup costs from a group of potentially responsible parties and then seek to recover remaining costs from nonsettling parties. While this flexibility is desirable in a settlement program, strict, joint and several liability is an element of the law because it assures full, rather than partial, recoveries. Joint and several liability in particular, shifts the burden of pursuing recalcitrants from the Government to other potentially responsible parties. The theory underlying Superfund's liability scheme was, and is, that the Government should obtain the full costs of cleanup from those it targets for enforcement, and leave remaining costs to be recovered in private contribution actions between settling and nonsettling parties.

Therefore, the provisions ratifying EPA's authority to enter into "mixed funding" agreements and prepare nonbinding allocations should not be read as encouraging any departure from the full recovery policy established in the original Superfund law. Nor do these provisions to shift the burden of pursuing recalcitrants from private parties onto the Government.

To facilitate settlements, the legislation confirms the President's authority to improve such agreements from a private party's perspective. The two most important categories of so-called sweetener provisions are those authorizing agreements to freeze a responsible party's percentage share of future cleanup costs and covenants not to sue for future liability. While such provisions are useful tools that the President may use to assist settlements, they unfortunately could result in inadequate payments or recoveries of cleanup costs—particularly for unknown and unanticipated problems. Payment and recovery of full costs is the overriding goal of the program. Therefore, all such provisions must be narrowly and carefully focused and not based on inadequate information about the full extent of a private party's potential liability.

The President should exercise special caution in agreements which might freeze an individual party's percentage share of future cleanup costs. Such future costs could arise from two very different situations: Contamination might be discovered that was undetected at the time the agreement was first signed; or, the initial remedy might fail for unanticipated reasons. In each case, the cost of remedying the unanticipated problems could be substantial and the facts and equities of the unanticipated problems could justify a larger contribution from the responsible parties which signed the original agreement.

The bill also explicitly authorizes the Government to enter into covenants not to sue. This authority exists under current law, but the Government has been reluctant to exercise it, according to officials of the Environmental Protection Agency and the Department of Justice, because of the widespread adverse publicity surrounding several early settlements. The express confirmation contained in this bill is not an encouragement to enter into settlements where they are unwarranted or inappropriate. Nor is it an indication that the Congress is necessarily dissatisfied with the number or content of settlements which the Government has entered into. Rather, it is merely a formal acknowledgement that settlement authority exists and may be exercised, if that is appropriate.

The inappropriate use of settlement authority would have an implication for the integrity of the entire program and the credibility of its managers. Indeed, it was such inappropriate use that created the adverse publicity which subsequently chilled the Government's willingness to enter into negotiations, even where that was patently reasonable.

An abuse, real or perceived, of the settlement authorities confirmed by this bill would recreate a situation which was undesirable from the perspective of nearly all parties. This is especially true of the covenants not to sue, because they represent a permanent commitment on the part of the Government to admitted polluters to never again pursue them, even when the threats to public health or the environment might be extraordinary.

It is essential that even the appearance of impropriety be avoided, and that there never be any doubt in the mind of the public that it is being completely protected, both now and in the future. This will require narrow, careful, and thoughtful implementation of the law's authorities, especially in areas where the Congress utilized necessarily vague language, such as the "reasonable assurances" test of section 122(f).

Section 122(f) gives the President discretionary authority to grant covenants not to sue for future undetected contamination in extraordinary circumstances, if the agreement contains "reasonable assurances" that public health and the environment will be protected from any future release.

In determining whether an extraordinary circumstance exists, the President may consider—where applicable—the same factors—for example, volume and toxicity of waste, culpability of potentially responsible parties—as would be considered in a normal settlement because these factors cover all of the usual factual considerations presented by a Superfund case. However, the identification of extraordinary circumstances justifying a covenant not to sue for undetected contamination involves an independent judgment by the President that the factors involved in the specific case are both atypical of the usual enforcement matter and, also, warrant special treatment.

In the past the Government has deemed certain cases involving de minimis or bankrupt parties to represent extraordinary circumstances justifying the granting of a covenant not to sue for undetected contamination, the circumstances of the contamination and the cleanup, taken as a whole, should establish the basis for a conviction—not merely a belief—that such undetected releases will not occur and that other potentially responsible parties will be available to pay for all subsequent cleanup that might be necessary.

Even after extraordinary circumstances are identified, such convenants may be granted only when other terms and conditions of the agreement provide adequate protection against future releases. Under no circumstances would such terms and conditions include the general availability of the fund to pay for future cleanup. However, they could include a clause in the agreement specifying that the covenant becomes effective only after a certain time period. It must be sufficient to provide the Government with ample opportunity to discover whether unanticipated contamination exists.

Finally, the bill reaffirms the President's authority to preserve the ability to take enforcement actions under sections 106 and 107 of current law if any future problems develop at a site cleaned up under a consent decree.

Section 122(f) reflects EPA's settlement policy as applied through July 1986. Under this policy, covenants not to sue for undetected contamination at a site are included in consent decrees only under extremely rare circumstances. In over 200 cases settled under the Superfund Program, the Government has included such covenants in only two or three cases. The provision anticipates no increase in or expansion of this policy or its rate of application.

The bill eliminates prosecutorial discretion, by mandating that the President grant covenants not to sue, in two extremely limited circumstances: First, when the cleaned-up hazardous substances are moved offsite to a facility which has received a final permit under the Resource Conservation and Recovery Act [RCRA]; and, second, where such substances are treated in such a way as to destroy, eliminate, or permanently immobilize all hazardous constituents.

The first circumstance, involving offsite transport to a RCRA facility holding a final permit, can and will occur

only if and when the President rejects an alternative remedial action plan that does not involve offsite transport but otherwise meets the requirements of the national contingency plan. In other words, in order to qualify for a mandatory covenant not to sue, the settlement agreement must embody an offsite remedial action that was selected after full development of an onsite alternative that also complies with the law.

The second circumstance, involving permanent treatment of all hazardous substances covered by the covenant not to sue, must result in either the destruction of such substances or fundamental changes in their characteristics such that they no longer pose a hazard to human health or the environment. Long-term storage in above ground—or underground—engineered structures does not qualify as a permanent treatment technology covered by the second circumstance.

In either case, the release goes only to the materials at the site to which they were transported—in the first circumstance—or to their residues, ashes, or other remnants—in the second circumstance. In either event, the set of circumstances defined by the covenant should constitute a null set, in the absence of grave error.

EXTINGUISHING CONTRIBUTION RIGHTS BY ADMINISTRATIVE SETTLEMENT

Mr. President, I support fair settlements as an efficient alternative to litigation. Still, I must speak out against what I see as an unwise and arguably unconstitutional settlement provision in section 122 of the conference bill.

It is often argued that responsible parties may be unwilling to enter into settlements with the Government without assurance that further liability will not be incurred in contribution suits by nonsettling responsible parties. Such suits are anticipated in situations where the Government, following settlement with less than all the responsible parties at a site, obtains further cost recovery in a later enforcement action against the nonsettling responsible parties. As passed by the Senate, H.R. 2005 provided that when a potentially responsible party entered into a judicially approved settlement, that party was not liable for contribution claims regarding matters addressed in the settlement.

The contribution protection in the Senate bill, I stress, was limited to judicially approved settlements. The conferees, however, adopted the approach of the House bill, which gives contribution protection in the case of administrative as well as judicially approved settlements. It is this broadening of the Senate bill's proposal that causes me deep concern, for it is bad policy and very likely unconstitutional.

It is bad policy because it gives bureaucrats, often under pressure to produce settlements, the power to determine when legitimate claims of nonsettlors shall be cut off. I do not for a moment question either the motives or energy of executive branch employees. I simply point out that both the Congress and EPA management have sought to crank up the Government's enforcement machine, and that those in the Government responsible for negotiating settlements are understandably eager to conclude such agreements. Hence, it seems unwise to allow administrative settlements, negotiated in private and not subject to judicial scrutiny, to peremptorily extinguish any valid claims that might be made in later contribution suits. Persons seeking fair reimbursement after paying an excessive damage award are at least entitled to have their rights determined impartially. This is fundamental in our society, and in my view is realized only when a judge, not an administrative agency, has the final say on the terms of a settlement.

The extension of contribution protection to administrative settlements is also flawed on constitutional grounds. It is a truism that the due process requirement of a fair tribunal applies to administrative agencies as well as to courts. *Withrow* v. *Larkin*, 421 U.S. 35 (1975). I am troubled, again, by the ability of the executive branch settlement negotiating team to meet this unyielding constitutional standard. Consider, too, how fair a process can be that decides the fate of claims—future contribution suits—that are not even before it. Finally, the cutoff of contribution rights here cannot meet the stricture in *Yakus* v. *United States*, 321 U.S. 414 (1944), that summary action of an administrative agency resulting in a deprivation of rights must be subject to later judicial review.

A separation of powers issue is also evident here. To give the power to extinguish independent legal claims is to erode the structural separation of powers and the "carefully defined limits on the power of each branch." *INS* v. *Chadha*, 462 U.S. 919, 958 (1983). Of course, the branches of Government are not "hermetically" sealed from one another. *Buckley* v. *Valeo*, 424 U.S. 1, 121 (1976). Nonetheless the separation of powers principle requires that each branch maintain its separate identity. Id. at 120–124; *INS* v. *Chadha*, 462 U.S. at 951. Although this Senator supports the conference report as a whole, I must, as a matter of conscience express my opposition to this particular provision.

SECTION 127—LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

Mr. President, some mention should also be made of the interplay between these amendments and the Marine Protection, Research, and Sanctuaries Act [MPRSA], which they amend.

Section 127(d) of SARA amends section 106 (33 U.S.C. 1416) of MPRSA to eliminate any preemptive effect which it might have and, thus, make it consistent with the letter and spirit of CERCLA. This action is necessitated by the U.S. Supreme Court's decisions in Milwaukee versus Illinois and Seaclammers versus Middlesex County. These two decisions, taken together, construe the MPRSA to displace Federal common law, interfere with other remedies under State and Federal law, and potentially preempt State law as well. Their effect is to leave injured parties with no available remedy, which is an outcome never intended or contemplated by the Congress in enacting the MPRSA or the other environmental laws, such as the Clean Water Act.

This amendment overturns Seaclammers. It also does more.

New subsection (h) states affirmatively that the savings clause extends to the entire act, not just the section. Apparently this type of drafting precision is now necessary because of the rigidity of the construction which the Supreme Court places on the use of words such as "section." It would be simpler, and preferable, if the Court would construe such words as the Congress intended, as reflected in documents such as committee transcripts. But apparently, for the moment at least, every misstep by the Congress in this area is, according to the Supreme Court, to result in a plunge into an abyss. In that regard, Mr. President, I would like to have appended to my remarks a statement which was inserted in the RECORD previously on this subject. I hope that it might provide guidance to the courts on this general subject, as well as some encouragement to more reasonably construe congressional enactments.

In any event, subsection (h) is to express our intent as best we can, that State law is to be undisturbed by MPRSA. Similarly, in cases on noncompliance, other Federal laws, including maritime tort law or common law, are also undisturbed.

The bill also, by adding new language to section 107(h) of CERCLA, assures that physical damage to the property or some other proprietary interest of the claimant is not an essential element of a right of action. Individuals who suffer a loss have a right of action. That the injury which caused that loss was to the property of the public or to another is irrelevant. The test is whether or not the claimant experienced a loss.

Mr. President, it is my custom to avoid issues which are in litigation, not embrace them. But to every rule there are exceptions.

There is now pending before the Second Circuit Court of Appeals a review of the decision by the U.S. District Court for Vermont in the case of *Oulette* v. *International Paper*, 602 F. Supp. 264 (1985). One of the issues in that case is whether the enactment of the Federal Clean Water Act extinguished rights of action under other laws, including Vermont common and statutory law. Why the question should arise at all is a puzzle to this Senator since the language of the Clean Water Act is quite clear on the subject. Section 505 of the Clean Water Act establishes the right of a citizen to sue to enforce the provisions of the act, then states explicitly that other rights are undisturbed. Subsection (e) states that—

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any affluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

Despite this clear language, at least one court has held that the act extinguishes some State common law. That court is the Seventh Circuit Court of Appeals, which made such a finding in *Illinois* v. *City of Milwaukee*, 731 F. 2d 403 (1984).

My purpose here is not to review the details of these and other court decisions, but to make available some legislative history which I hope will be helpful in indicating just what was intended by the Congress. This legislative history includes transcripts from the markups during 1970 and 1971 of the Clean Air and Clean Water Act.

The citizen suit provision was first adopted in the Clean Air Act and then, about 1 year later, incorporated in the Clean Water Act. Therefore, to completely understand what the members of the Committee on Public Works and the Congress intended it is necessary to review transcripts and other documents relating to both laws.

The subject of preempting or displacing rights available under other laws arose for the first time on June 4, 1970, at a meeting of the Subcommittee on Air and Water Pollution. The subcommittee was meeting to mark up what was later to become the Clean Air Act. Included in the bill before the subcommittee was a proposal to authorize citizens to file suit to force compliance with pollution control requirements. As the subcommittee members were discussing this proposal, Senator Howard Baker offered an observation and expressed a fear as follows:

Senator BAKER. The only question is whether or not you have access to the Federal courts under one of the jurisdictional requirements for diversity or jurisdictional amount or one of the other specialities. So we aren't creating a brand new cause of action. We are, rather, modifying one that already exists.

I think that brings to mind something that we should make sure we fully understand; that is, that we don't limit and circumscribe the right of citizens individually and as a class to do what they can already do by spelling it out here in this statute. If we start spelling out each detail here, the court is going to hold that we have obliterated everything else that the common law created. (Transcript Roll 15, p. 1687.)

The discussion then moves on to other subjects, but a minute or two later, Senator Baker suggests that the bill be amended.

Senator BAKER. I think you could also put in a saving clause to the effect that:

"Nothing contained in this act shall abridge or abrogate any pre-existing right by statute or common law."

I think the courts would permit that. (Transcript Roll 15, p. 1692)

The transcript shows no direct response to Senator Baker's suggestion at this time, but on July 29, 1970, the subcommittee was meeting again to markup the proposed Clear Air Act. Senator Baker was absent, but there was a discussion of the meaning of the savings clauses:

Senator COOPER. If I may ask another question . . . what would be embraced in equitable relief? (Would it affect) any personal rights you may have as a person, for damages.

Mr. JORLING. The intention in the language, as I understand it, is to specifically avoid any damage provisions. It is strictly an equitable provision to abate, to halt, to prevent this violation from occurring, and does not address itself to either physical or monetary damages in any way. It is strictly an action to achieve this abatement, if found, of a violation of the schedule of compliance and emission stand (sic) or emission requirement.

It does not go to the issue of damages at all, and that comes out, I think, of the whole philosophy of the act, and that is, it is very difficult for anybody to prove personal or monetary damage resulting from the effects of air pollution.

Mr. BILLINGS. We have reserved the rights of citizens under other common law to seek damages for pollution, if such damages occur. (Transcript Roll 16, p. 0080–81.)

The two staff members responding to the questions from Senators Cooper and Spong were Leon G. Billings and Thomas Jorling. Mr. Billings, who was not a lawyer, was staff director of the Subcommittee on Air and Water Pollution and Senator Muskie's principal aide. Mr. Jorling, a lawyer, was minority counsel to the full committee and the principal aide to the Republican members.

The transcripts contain one further reference to the savings clause, which is a statement by Senator Spong of Senator Baker's original intent. The members were discussing whether citizens should be required to provide notice to administrative agencies as a precondition to filing suit. There had been earlier subcommittee discussions, and the members were attempting to refresh their recollections, with Senator Muskie observing at one point, "* * * we have gone through this once before. I forget just how we resolved it." (Transcript Roll 16, p. 0088.) Senator Spong recalls the following:

Senator SPONG. It is coming back to me now. Senator Baker's concern was that we could be taking a right away from a citizen . . . to go into court . . . . (Transcript Roll 16, p. 0090.)

Following subcommittee and committee markup, the bill was considered by the full Senate on September 21, 1970. As it had in the earlier stages of the legislative process, floor attention focused almost exclusively on the consequences of conferring on citizens an explicit right to sue to enforce pollution laws. Senator Philip Hart of Michigan defended the provision, which was by then section 304 of S. 4358, as "one of the most attractive features of the bill," adding that it would not result in a proliferation of litigation.

The bill makes no provision for damages to the individual. It therefore provides no incentives to suit other than to protect the health and welfare of those suing and others similarly situated. It will be the rare, rather than the ordinary, person, I suspect, who, with no hope of financial gain and the very real prospect of financial loss, will initiate court action under this bill.

(Legislative History of the Clean Air Act Amendments of 1970, Congressional Research Service, Library of Congress, Washington, D.C., Volume 1, p. 355.)

Senator Hart's remarks, together with the transcripts of the markups, make it clear that Senators believed that, in enacting the Clean Air Act, they were supplementing remedies available to injured parties, not supplanting them.

The House bill contained no comparable citizen suit provision. But with some changes in the Senate language, the House receded. The last sentence of the statement of managers on part of the House in explanation of the section 304, the citizens suit provision, was the following:

The right of persons (or class of persons) to seek enforcement or other relief under any statute or common law is not affected. (Id. at p. 206.)

During consideration of the Clean Water Act the following year, much less attention focused on the citizens suit provision. That is due, in part, to the fact that the version contained in the Clean Water Act was identical to what had been enacted in the Clean Air Act, except for changes required because of differences in terminology—for example, discharges of water pollution effluent vice emissions of air pollution).

At this time several bills were pending in the Congress to expand the rights of citizens to file class action suits. Therefore, some discussion concerned itself with the issue of whether the parenthetical phrase "or class of persons" might have the effect of expanding the then current law. On September 21, 1971, the Committee on

Public Works held a markup of the proposed Clean Water Act amendments which had been reported by the Subcommittee on Air and Water Pollution. During the review of the citizen suit provision, the following exchange took place:

Senator COOPER. Do you want to tell us against whom action may be brought and for what causes and then exceptions? Then on page 115, subsection e, you add, "Nothing shall restrict any right which any person (or class of persons) . . .". Is the right of a class of persons only available under the conditions set out in e, in other words, when they have a right under State statute of common law?

Mr. MEYER. Well, it is a parenthetical phrase.

Mr. JORLANG (sic). The intention is, as in the Air Bill, to avoid in this provision any of the complexities that are raised with cross-action (apparently class-action) suits on the basis that this is a provision that authorizes only equitable relief. There is no provision for the recovery of damages nor for requirement of showing of damages.

The provision, subsection (e), provides merely that this section, the authorization granted in this section, in no way affects any rights a person has, whether or not acting alone or as a class, under any other law, statutory or common, for relief against a pollutor (sic). This would normally mean that if there are some damages, standard common law damages, and a person would like to join with a class of people that suffered similar damage, this does not prevent them from doing so. (Transcript Roll 17, p. 1617-18.)

This understanding of the savings clause was also reflected in the committee report accompanying S. 2770, which explained what was to become section 505(e) as follows:

It should be noted, however, that the section would specifically preserve any rights or remedies under any other law. Thus, if damages could be shown, other remedies would remain available. Compliance with requirements under this act would not be a defense to a common law action for pollution damages. (Legislative History of the Water Pollution Control Act Amendments of 1972, Congressional Research Service, Library of Congress, Washington, D.C., p. 1499.)

The issue of what impact, if any, the enactment of the Clean Water Act would have on the availability of other statutory or commond law remedies was apparently not discussed further. However, it would seem that further discussion was unnecessary. From the first mention of the issue by Senator Baker during the subcommittee markups of the Clean Air Act to the last recorded mention of the subject in the Senate Public Works Committee report on the Clean Water Act the attitude and intent of the members was remarkably consistent. Not once was there ever any doubt as to what they intended or disagreement as to its correctness. In every discussion of the matter it was clear that all other rights—whether State or Federal, statutory or common law— were to be preserved.

The clarity of the repeated statements to this effect and the unanimity of agreement on the proposition made further discussion meaningless.

I might observe that this Senator was a Member of the other Chamber when the Clean Air Act amendments were adopted and a member of the Senate Committee on Public Works when the Clean Water Act amendments were considered and approved. Speaking only for himself, this Senator can recall no occasion on which it was ever suggested at the time of their consideration that the enactment of the Clean Water Act or the Clean Air Act would diminish the rights of injured parties. On the other hand, I can find a record replete with unequivocal statements by Members and staff that these rights were to be preserved, combined with clear indications of affirmation and agreement by other Senators and Representatives.

In the face of a record such as this, it seems impossible for any reasonable person to conclude that the Congress intended by the enactment of these laws to provide the public with less protection from personal injury than it had before. Such a conclusion is directly at odds with every statement made during the long and detailed consideration of these laws. Nevertheless, some persons apparently have reached such a conclusion in the past. I would hope that in light of the information I have just provided, they will reconsider and correct earlier decisions.

Mr. President, the complete transcript to which I have referred are available through the documents room of the Committee on Environment and Public Works should any person wish to review them.

TITLE III—COMMUNITY RIGHT TO KNOW

Mr. President, I would like to continue my commentary with a few remarks about the Community Right-to-Know provisions of this bill. I was privileged to serve with two of my colleagues, Senator BENTSEN and Senator LAUTENBERG, as Senate representatives to a subgroup of the Superfund Conference that developed the conference substitute language for this title.

These provisions were developed in large part as a result of the terrible disaster in Bhopal, India, at which deadly fumes of methyl isocyanate, a pesticide, intermediate, were released accidentally into a sleeping community, resulting in death or injury to thousands of people. A strong worker and community right-to-know movement already was developing in this country. The Bhopal disaster focused public attention on the fact that extremely dangerous chemicals are present at chemical manufacturing plants and other facilities in communities all across America. This title of the Superfund bill recognizes a basic fact: that citizens have a right to know about these chemicals—what they are, where they are, and how much of them is present.

But the bill goes beyond concern about accidental releases of these toxic and hazardous chemicals. It also recognizes that the public has a right to be informed about routine releases of these chemicals to the air and the water and the land. Just as the public has a right to know about releases that might happen as a result of an accident, the public also has a right to know about releases that do happen every hour and every day that some manufacturing facilities operate.

The Bhopal disaster also focused public attention on the inadequacy of disaster planning around facilities where large amounts of toxic and hazardous chemicals are used and stored. The bill deals with this issue by requiring the establishment of appropriate emergency plans in communities where certain dangerous chemicals are used or stored.

Mr. President, I would like to mention a few particular provisions of this title.

One of the most difficult issues that confronted the conferees was the question of trade secrets. There is no question that legitimate trade secrets exist in the chemical industry. Sometimes an advantage gained by use of a particular chemical compound in a complex fabrication process represents the competitive edge that company has over others.

But it is equally true that the primary purpose of a community right-to-know law is to inform the public about these chemicals. Any concessions made to trade secret concerns must be only as broad as necessary to protect a legitimate trade secret.

In that regard, one of the most important provisions of this bill is the requirement that any person who claims the specific identity of a chemical subject to reporting must substantiate that claim at the time the claim is made. This requirement for substantiation consistent with the Senate bill. The showings the claimant must make at the time the trade secrecy claim is submitted are set out clearly in the statute. The Environmental Protection Agency must determine whether the submitted justification for the claim, assuming its veracity, meets the substantiation requirements of section 319(b).

Procedures are set out for persons to petition the Agency to release trade secret information. These procedures do not shift the burden of proof to the petitioner. Instead, they provide a mechanism by which a citizen can require a trade secret claimant to document the legitimacy of the trade secret and the veracity of the claim with respect to the elements of substantiation discussed above. Thus, for

example, a claimant may support a trade secrecy claim, in part, by asserting as fact that the chemical is a secret catalyst that allows a certain incremental gain in production efficiency, and that disclosure that the chemical is present at the facility would reveal this fact and would "cause substantial harm to the competitive position" of the claimant. Upon challenge by the Administrator in response to a petition, the claimant must document these assertions with appropriate chemical engineering and market data. The bill contains appropriate penalties for false representations.

Of course, the Administrator is not required to wait for a petition in order to require documentation of the legitimacy of a claim.

The conference substitute also contains special provisions that assure disclosure of trade secret chemical identity to States and, on the basis of a confidentiality agreement, to health professionals. State health professionals do not have to execute confidentially agreements because of their position as employees of State government.

It is not intended that the confidentiality agreement create a significant burden for the health professional. The health professional is in the best position to judge whether knowledge of specific chemical identity is needed to fulfill his or her professional responsibility. the facility owner or operator should not substitute his or her judgment for that of the health professional.

Similarly, the confidentiality agreement must not limit unduly the use of the information by the health professionals. For example, health professionals routinely consult with one another about symptoms, medical findings, and the treatment of disease. A confidentiality agreement should not inhibit such consultation. Similarly, health professionals often present lectures or publish scientific papers about their research and clinical experience. In most cases, it should be possible to report medically important facts about a specifically identified chemical without disclosing a legitimate trade secret. For example, it is the presence of a particular chemical at a particular facility that is the trade secret, not the relationship between the chemical and any observed clinical effects. Therefore, health professionals should be free to report medical information about such a chemical while preserving the trade secret by not naming the facility at which the chemical is used.

Subsection 313(d) of the bill authorizes the Administrator to list chemicals for the purposes of reporting under that section on the basis of various health and environmental effects. With regard to chronic human health effects, chemicals may be listed if they cause or can reasonably be anticipated to cause certain "serious or irreversible" human health effects. Similarly, chemicals may be listed if they cause or can reasonably be anticipated to cause "significant" adverse acute effects. An effect does not have to be life-threatening or debilitating to be considered serious or significant, nor does it have to affect the general population. In particular, the Administrator is to consider adverse acute effects on sensitive individuals.

The Administrator should recognize that he or she is not regulating a chemical by listing it under this subsection. There is no requirement to perform risk assessments or to balance the benefits and costs of a decision to list. The purpose of this section of the bill is to inform the public which can be accomplished without very great burden on the reporting facility. Therefore, a decision to list a chemical for the purposes of reporting under this section can and should be made on the basis of less scientific evidence than would be needed to regulate its manufacture, use or disposal.

This section also requires the Administrator to computerize the data reported on the required forms and to make these data available to the public by various means. Successful implementation of this requirement is vital to the basic purpose of the program. The data should be managed in the computer in such a way as to allow a wide variety of analyses. For example, it should be possible to retrieve data not only about individual facilities, but also aggregate data organized by type of chemical, type of effect, geographic location, company name, etc., as well as combinations of these parameters.

Where the specific identity of a chemical is a trade secret, the Administrator must identify its adverse health and environmental effects in responding to requests for information. This linkage is needed because it is usually impossible to research the toxicological literature on the basis of a general class of category name. In order to make it easier for the lay public to understand, the Administrator also should identify the adverse effects of toxic chemicals for which specific chemical identity is not withheld. For purposes of listing chemicals and identifying adverse effects, the Agency may rely on structure-activity relationships as well as test data on individual chemicals.

In implementing this section, the Administrator should keep in mind that its primary purpose is to inform the public about routine releases of toxic chemicals. The computer database must be managed in such a way as to maximize its accessibility and utility to the public.

I pay particular tribute to my colleagues who were the conferees from the Senate and particularly my friend and colleague, Senator BENTSEN, all of the others, Senator MITCHELL was one of those, who worked long hours in the effort, and Senator LAUTENBERG, from New Jersey. There were others. I will do injustice to them by not naming them, I am afraid. But all of our conferees did a splendid job and it took us to the point where we could bring this conference report to the Senate.

I yield to my friend from Texas.

Mr. BENTSEN. I thank my distinguished chairman. In the allocation of time on this side I reserve 7 minutes to myself, 1 minute to the distinguished senior Senator from New Jersey and 5 minutes to the distinguished junior Senator from New Jersey.

Mr. President, this legislation as my chairman has stated has been the result of a long and very arduous task carried on by the Senate conferees and the House conferees. It was, I think, one of the most difficult and most meticulous and detailed conferences I have ever seen insofar as the programmatic parts of Superfund were concerned and in turn trying to get an equitable sharing of the burden of paying for the cleaning up of these sites by the conferees from the Finance Committee. I had the dubious distinction of serving as a conferee for two of the committees having jurisdiction in this regard. I think it was an education that took place as we proceeded in the development of the statement of the conferees.

Defining an appropriate taxing approach to fund the Superfund has been a compelling and critical task. Over the last 3 years, we've had a lot of ups and a lot of downs. We've had endless meetings, endless negotiations. We've learned an enormous amount in the process.

I think that the main lesson of the last 3 years is that Superfund is a societal problem. When the first Superfund Program was created 6 years ago, the prevailing belief in the Congress was that the chemical and oil industries were primarily to blame. Those industries were the dirty industries. The polluters. Those industries were endangering our health and our children's health, destroying the environment, and leaving a legacy of hazardous waste to generations to come. The Congress believed that it was easy to draw a nice, bright line between "good" industries and "bad" industries: the chemical and oil industries were bad, and all other industries were good. High-Tech industries were good; food companies were good; manufacturers were good; steel companies were good.

Unfortunately for those who seek simple answers, Mr. President, this reauthorization process has shown that it just isn't so. I would guess that by now many of my colleagues have seen

the lists of companies that have been identified as contributors to Superfunds sites. Take the Stringfellow site in California, one of the worst hazardous waste dumps. Let me read off some of the names for that site:

Alcoa;
American Electronics, Inc.;
Automation Industries;
Borg-Warner Corp.;
Briggs Manufacturing Co.;
Calif. Electroplating;
Calstrip Steel Corp.;
Carrier Corp.;
Firestone Tire and Rubber;
Ford Aerospace and Communications;
General Foods Corp.;
McDonnell Douglas Corp.;
Northrup Corp.;
Purex Corp.;
Teledyne; and
Bell Wire Co.

The list goes on and on. There are hundreds of names on the list. Every conceivable kind of company is on the list—computer companies, food companies, steel companies, service business, trucking companies agriculture companies, aerospace companies, electric companies, etc. etc. sure, there are some oil and chemical companies, but the overwhelming majority of companies on the list have nothing to do with producing oil or chemicals.

This tells us one simple thing, Mr. President: while chemical and oil companies may have produced many of the hazardous substances that have found their way into Superfund sites, industries of all types have been responsible for actually dumping the substances into the sites. The dumping may have been done by a plastic manufacturer using hydrocarbons in its manufacturing process. Or it may have been done by a computer chipmaker using solvents to etch the chips. Or it may have been done by a food processor manufacturing packaging for its food. Companies of all stripes have been responsible for dumping hazardous waste.

Information recently compiled shows that the chemical industry manages 99 percent of its waste on site. Let me repeat that Mr. President: 99 percent of chemical industry waste is managed on site. Hazardous wastes managed on site cannot become a Superfund site, and that's for a very basic reason: liability for the cleanup of such waste is not in dispute. This is a point often lost in the debate over how to pay for Superfund. The Superfund Program has nothing at all to do with Superfund sites for which liability can be pinned on a private party; that party has to pay. The Superfund Program only has to do with so-called orphan sites—sites that are not owned and managed by any one company and for which liability is unclear. And the chemical and oil industries have nothing more to do with orphan sites than any other industry.

What we have before us today is a tax title that recognizes the societal nature of the Superfund problem. Instead of loading the tax for the new, expanded program on the oil and chemical industries, we recognized the facts and adopted a broad-based tax to spread the burden throughout the economy. This new broad-based tax will be levied at a rate of 0.12 percent on corporate profits. To measure corporate profits, we have adopted the alternative minimum tax base contained in the tax reform bill. Small companies will be exempt from this tax, but other than that, there are no exceptions—all industries will pay.

We can quibble about the precise type of broad-based tax that would be best for the program. Last year this body overwhelmingly approved a broad manufacturers excise tax for the program. I authored that tax with Senator WALLOP, and I still think it is a fair solution, and one that bears a close relationship to the problem. But the House would not approve that approach, and so we sought another approach. The corporate profits tax that we have finally included in the package may not be perfect, but it serves the purpose of spreading the Superfund burden broadly through the economy, and I support it.

Besides the broad-based tax, the package also extends the tax on chemical feedstocks, at the old rates. I certainly would have preferred to drop the feedstock tax altogether—and I believe that that would have been the fair thing to do—but I also recognize reality. I was willing to go along with the extension of the tax if there were no rate increases. I might mention that this is a very major departure from the four-fold increase in the feedstock tax that the House passed 2 years ago, and also a major change from the $800 million increase the House passed last year. The unfortunate fact is that taxes on chemical feedstocks merely tend to push our chemical industry and their closest customers overseas. If you're a manufacturing company and you purchase large amounts of chemicals for your business, you'll think twice about setting up business in this country if you have to bear the burden of the feedstock tax. You'll set up abroad and purchase chemicals that aren't taxed. And you'll export your finished products to this country free of the feedstock tax. It would have been a step backward if the feedstock tax had been increased in the face of our country's ballooning trade deficits.

A major victory for the Senate in this package was the rejection of a so-called waste-end tax—a tax on the generation of hazardous waste. The House bill sought to raise $2 billion from such a tax. The tax would have been an administrative nightmare for the IRS, as well as an unreliable and declining revenue source. It probably would have proven to be a stimulus for midnight dumping, and a further drag on the competiveness of several U.S. industries, particularly the chemical industry. My colleagues and I on the conference flatly rejected the idea of a waste-tax, but the House negotiators persisted in promoting this tax until the last minute. They finally concluded the issue yesterday, and the overall package quickly came together.

Our tax package, Mr. President, also contains taxes on oil. Under our compromise, the rate will be 8.2 cents per barrel on domestic production and 11.7 cents on imported oil and imported petroleum products. Companies that import oil don't care for this compromise. I understand that, and I regret that. But we have protected domestic producers in the bargain. Although domestic producers will have to pay 8.2 cents per barrel to the Government, they should find their prices rising by that much or a few pennies more. I would not have been able to support a conference report that attempted to squeeze significant money out of the battered domestic oil industry, and I think we have put together a package that protects the industry.

All things considered, Mr. President, the tax package that we have put together is a good package deserving of the strong support of the Congress. I believe it deserves the support of the President of the United States. Although it still singles out the chemical and oil industries for some special treatment. It also establishes a broad-based tax, and that is the real achievement of this bill. This bill also is fair to the State I represent. It is estimated that companies in my State of Texas pay about 49 percent of the revenues collected by the feedstock tax. That means that my State, which has only 3 percent of the Superfund sites, shoulderly a hugely disproportionate share of the cost of the first 5-year cleanup program. Enactment of a waste-end tax as in the House bill would have exacerbated the problem since Texas companies would have paid about 46 percent of that tax. Under this conference report, however, Texas will pay its fair share of the costs of the program. But not more than its fair share. It will pay only its proportionate part of the broad-based tax. Although Texas companies will continue to be subject to the feedstock tax, that tax will represent only about 16 percent of the expanded fund. In addition, the tax on imported oil will actually represent a benefit for Texas oil producers.

Mr. President, in this bill we have firmly established the principle that hazardous waste is a societal problem. I don't harbor any illusions that we

will not be back on this floor in 1991 debating the Superfund again. At that time, however, I hope the debate will center on the level of the funding, rather than on whether to punish one or two industries.

What we are talking about is a revenue package of $8½ billion compared to the $1.6 billion that was originally passed compared to the little in excess of $5 billion that was talked about by the administration and some $11 billion by the House.

It is a good compromise. It is a good bill. I strongly urge its passage.

Mr. President, the provisions of this bill to alter the programmatic provisions of the Comprehensive Environmental Response, Compensation and Liability Act is the result of several years of activity by the members of the Committee on Environment and Public Works including a conference that lasted about 6 months. It is a tribute to the skill and endurance of my colleagues on this committee particularly the chairman, Senator STAFFORD, and Senator MITCHELL who was the pivotal negotiator of one of the most difficult provisions of the bill—clean up standards.

These amendments should strengthen the Superfund law. They should improve the Superfund law. I believe we are handing the Environment Protection Agency a better law, a law that will improve their ability to respond to hazardous waste sites, a law that should facilitate settlements between responsible parties in the Federal Government completing cleanup actions at the many almost 900 listed sites around the country. However, this is a complicated, very difficult area to judge the outcome of the difficult policy decisions that we had to make in this bill.

Six years ago, when we first enacted Superfund, we believed that we were putting in place a law that would allow the Federal Government to respond quickly and expeditiously to a wide variety of releases of hazardous substances and, in particular, to create a program which would clean up numerous abandoned hazardous waste sites around the country. We gave the President sweeping authority to respond to virtually any type of release of virtually any harmful substances whether it is released or only threatened to be released. We put in place a legal regime of strict liability which we believed would encourage responsible parties to rapidly resolve their responsibilities in order to avoid potentially enormous litigation costs, potentially large penalties associated with the failure to respond to site cleanup activities under a regime that largely is weighted toward the Federal Government. We supplied a superfund which was designed to be available to the President to instantly respond where necessary and to handle those situations where responsible parties were unavailable for cleanup action.

In the last 6 years we have learned that this process is not as easy as we thought it would be in 1980. While in my view and many others the program was not initiated in the most vigorous and effective way, it is equally true that it would have been a complicated program to initiate in any event. It was clear very quickly that responsible parties were not going to be easily placed in a position of settling on waste site cleanup responsibilities. The process of identifying waste sites was complicated. The process of determining which wastes were at sites was complicated. The process of trying to assign responsibility to various waste generators was complicated. And the threat that one or two or three large corporations would be held jointly and severally liable for costs far in excess of what their contribution to a waste site would be made it certain, in retrospect, that the attorneys for virtually every company that was involved in a waste site would try to assure that his company would be responsible for no more than what they could reasonably be expected to contribute to a site. If this meant bringing in large numbers of other responsible parties, of very small contributors, holding them in the litigation until the very end, this strategy would be followed.

At the same time, because of the serious questions that had been raised about the handling of the program at the Environmental Protection Agency in its early years, the Federal Government was faced with very difficult decisions about which cases it should settle and which cases it should take to court. On the one hand, if it settled a case, Congress was critical of the agreements that were made. On the other hand, the Federal Government attorneys did not want to take weak cases to court if they thought that they would be unable to prevail on critical legal issues associated with the case which would establish legal precedents with regard to all the other cases that they needed to pursue.

Consequently, this process has generated a seemingly endless litany of iterations between the threats of litigation and attempts to settle at waste sites while the actual cleanup activity has been delayed and delayed and delayed. Moreover, the judgments that had to be made about what types of remedial actions would be taken at various waste sites significantly influenced the speed with which cleanup actions could be taken and the resolution of the litigation. If the cleanup action was to be relatively quick and inexpensive, action could be taken more easily and agreements could be reached about who would pay the cost. As technologies got more complicated, it became clear that these costs would be harder to resolve. Everyone had a different view of what constituted a cost-effective cleanup. Everyone had a different view of what the remaining liabilities should be after agreements were reached on the technological solutions to various sites.

Citizen groups were concerned that their interests were not being well protected by the Federal Government. Citizen groups were concerned that the choice of remedy would be one which eliminated potential future risks. Potentially responsible parties were concerned that they would not be paying for a remedy which cost far more than was necessary to protect public health. The Federal Government was concerned that its liabilities in the future, if the remedy failed, would be borne by the responsible parties and not by the Federal Government. Given this inherent set of conflicts, it is no wonder that the Superfund Program was unable to respond as quickly to this problem as many who crafted this legislation in 1980 believed it should.

When we approached this conference, these were the problems that confronted us. We wanted to try to generate changes to the Superfund law which would make it work better, faster, and would make certain that it was equitable to everyone concerned. We found that these decisions were more difficult to make than we had anticipated. The bills were vastly different in many respects. To try to make the process workable, we had to separate the bills into many issue areas. We had to make difficult policy decisions in each of these areas. Many of these resulted in complicated new requirements. The cleanup standards provisions provide a typical example.

This section provides a comprehensive approach to remedy selection at Superfund sites. This provision accommodates our desire to develop more permanent, effective remedies at sites, while maintaining the EPA Administrator's flexibility to select the most appropriate remedy at a specific site. There are four basic requirements in selecting remedial actions. These actions must:

Protect human health and the environment;

Be cost effective;

Utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

Meet applicable and relevant or appropriate standards, requirements, criteria, or guidance under Federal or State environmental laws.

We intended to express a strong preference for the permanent reduction of the mobility, toxicity, or volume of hazardous substances through the use of treatment.

In making remedy selection decisions at a specific site, the Administra-

tor should, at a minimum, evaluate the various alternatives on the following factors: Cost, reliability, and long-term effectiveness, residual public health risk, implementability, and short-term implications.

This section establishes the baseline level of protection for all remedial action selected and approved under Superfund. Any standard, requirement, criteria, or limitation under Federal environmental statutes or any more stringent State standard, requirement, criteria, or limitation which was duly promulgated pursuant to State law, must be met at Superfund cleanups if such requirement is legally applicable or relevant and appropriate under the specific circumstances of the release. The Administrator may waive those requirements if certain limited, enumerated conditions are met.

Maximum contaminant level goals must be attained at the point of use of the drinking water where such goals are relevant and appropriate under the circumstances of the release. Where the ground water is contaminated, the appropriate ground water standard will be used to determine the level or standard of control. Remedial actions involving water which is not used, nor projected to be used, as a drinking water source need not consider these goals.

The section requires the Administrator to meet the requirements of State facility siting laws, except where they would effectively result in the statewide prohibition of land disposal. Any substantive objective criteria of State siting laws should be applied to Superfund cleanups in the context of the Remedial Investigation/Feasibility Study and does not require a siting board review or other administrative process.

The section also provides for the selection of more permanent remedies. It expresses a strong preference for remedial action in which a principal element is the permanent and significant reduction of the volume, toxicity, or mobility of the hazardous substances. It requires the utilization of permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. These requirements are not to be taken lightly; in the future, remedies will be more permanent. However, this language should not be read to constrain the Administrator's flexibility in selecting a cost-effective remedy appropriate for the specific site.

This preference for remedies incorporating permanent solutions and alternative treatment technologies means that such remedies are presumed to be appropriate cost effective remedial actions and should be selected to the maximum extent practicable. In determining whether these remedies are practicable, the Administrator may take into account technical feasibility, cost, State and public acceptance of the remedy, and other appropriate criteria.

Given sufficient resources and implementation time, several technologies, independently or in combination, may achieve any level of protection or permanence. This section does not require the expenditure of huge sums of the limited Superfund moneys to treat each and every bit of contamination. Rather, we intend that the Administrator use permanent remedies and alternative treatment technologies as the reference point and evaluate all remedies in comparison to the protection and cost effectiveness provided. Where remedies involving permanent solutions and alternative treatment technologies are not practicable, another remedy which is cost effective and satisfies the other requirements of this section may be chosen. While this section sets forth strict requirements, it does not direct the selection of overly costly remedies where alternative cost effective remedies provide comprehensive protection of public health and the environment.

This lengthy section replaces a small paragraph of the current law. Virtually every word of the section was developed with great care and scrutiny. As I indicated earlier, Senator MITCHELL focused much of his excellent talent to the crafting of these provisions. Where we had to make choices, we made them with an understanding of policy choices that were available to us.

We would make all the same decisions again. These decisions were made for clear policy reasons.

It is my hope that as Congress conducts oversight on this legislation, it will recognize that this law has become far more complicated than it was, that it is not merely the will of the administration that will determine how expeditiously the program will return to full activity. This is a time for Congress and the administration to work together to get this much needed program going again. We have deliberated these questions long enough. We have made the tough choices that have to be made. Now we should work together—the Federal Government, the States, the industries, the citizens to get these sites cleaned up.

Mr. President, I reserve the balance of the time I allocated to myself. I yield 5 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER (Mr. GRASSLEY). The Senator from New Jersey has been yielded 5 minutes.

Mr. LAUTENBERG. Mr. President, I thank the ranking minority member of the Environment and Public Works Committee and, of course, the distinguished chairman of the Committee on Environment and Public Works.

Mr. President, I rise today with some emotion and a feeling of enormous gratification. Today, the Senate is finally turning to consideration of the conference report on the Superfund reauthorization bill. I hope it will mark the end of the debate on Superfund and the beginning of a new era of environmental protection.

Mr. President, I was privileged to join as a member of the Environment and Public Works Committee in the spring of 1984, when a succession of events resulted in the committee to temporarily be expanded during the 98th Congress. I immediately sought membership on the committee, because of the importance of its jurisdiction to New Jersey, and, indeed, the entire Nation. I was on the committee only a short time when we turned to the Superfund renewal bill. Since that time, enactment of an expanded and strengthened Superfund bill has been my top legislative priority.

Mr. President, this has been a long and hard process. Toxic waste clean up is a technologically complex challenge and a politically charged issue. In the aftermath of enacting the original Superfund Program in 1980, we have applied significant resources in locating abandoned toxic waste sites and devising remedial action plans adequate to the task before us.

The Environmental Protection Agency currently lists 900 sites on the national priority list for clean up under Superfund; 99 of these sites are in New Jersey. Projections by the Office of Technology Assessment and EPA indicate that this list will grow significantly as we proceed with this effort. Cleaning up these sites will be expensive. It will require assigning liability to the parties who contributed to the creation of these sites. And, it will require a financial contribution from a range of parties, some of whom may not have contributed directly to our toxic waste problems, but all of whom have benefited from the products produced by the chemical and petroleum industries.

As a conferee, I would like to take this opportunity to thank and commend the able chairman of the Environment and Public Works Committee, Senator STAFFORD, and the ranking minority member, Senator BENTSEN for their outstanding leadership and for making sure that this task was completed. I also want to thank the Senator from Maine, Senator MITCHELL, for his support and guidance. The leadership of the chairman and ranking minority member and their commitment to environmental protection made the difference in many tough negotiations and contentious issues.

On a more personal note, I want to acknowledge their consistent cooperation in accommodating my concerns about the Superfund Program. Sena-

tor STAFFORD made it possible for me to hold two field hearings on Superfund in New Jersey, one in 1984 on Federal-State issues, and one in 1985, after the Bhopal tragedy, on community-right-to-know issues and emergency response capabilities. These hearings resulted in the adoption, by the committee, of measures I sponsored in response to information gathered at these hearings. Their willingness to bring the committee to New Jersey gave our State a special voice in shaping a bill responsive to New Jersey's needs.

With the help and work of Senators STAFFORD and BENTSEN, and many other conferees, we bring before the Senate a conference report that represents a significant step forward in our Toxic Waste Cleanup Program. This is legislation with tough, new cleanup standards. Radon mitigation. A leaking underground tank program. Citizen suits.

The conference report also contains a community-right-to-know program, which I introduced in 1985, and to which I, personally, devoted much effort. In my State and others, it will be critical to communities—in alerting them to the dangerous chemicals present in their communities, and in laying the foundation for effective emergency response planning.

The right to know means public information about what hazardous substances are being stored and released into the environment in our communities. It means planning for emergency releases before they happen. It means that our citizens and our emergency response personnel will be safer and better prepared for the threats from chemical releases. It means that this Nation will not tolerate Bhopal- or Chernobyl-type tragedies.

Mr. President, this bill also establishes, for the first time, a comprehensive Indoor Air Research and Demonstration Program within EPA. This program, detailed in title IV, will focus on the problem of radon gas contamination in American homes.

EPA and the Centers for Disease Control have linked radon, a known carcinogen, to as many as 20,000 lung cancer deaths a year, placing it second only to cigarette smoking. The need to act on the problem of indoor radon is clear. The provisions in this bill, which I introduced with my colleague from Maine, Senator MITCHELL, set us on an effective course for dealing with this major public health threat.

Under the provisions in title IV, the EPA is directed to establish a radon program, and to serve as the lead agency in Federal efforts to address this problem; $15 million is authorized over the next 3 fiscal years for EPA's responsibilities under this title. EPA is directed to conduct a national assessment of radon contamination, and, in conjunction with other agencies, further research the health effects of radon contamination. Health guidelines are to be established, and guidance to States is to be provided. EPA will also work with the Department of Housing and Urban Development on model building codes, to prevent radon contamination from occurring in new homes and other buildings.

EPA is also directed to carry out a mitigation demonstration program. With funding that I was able to include in the EPA appropriations bill for fiscal years 1986 and 1987, EPA has begun this program. Its success will enable us to bring hazardous levels of radon under control, protect public health, and potentially save thousands of lives each year.

Mr. President, as these provisions demonstrate, this is a conference report that responds to the needs of this Nation. It enjoys overwhelming support in the Congress. I urge its swift adoption.

Mr. President, time is of the essence. This afternoon, I understand that the President will be meeting with his top advisers, many of whom will apparently urge him to veto or pocket veto this bill. Prior administration communications with the Congress suggest that the President's advisers will recommend a veto if the bill raised more than $5.3 billion in revenues, levied a tax on oil, or had a broad-based tax component. The bill contains all three of these components.

Mr. President, I hope the President will turn away from advice to veto this bill. I hope that the President will take into account the long deliberations which went into writing this bill, and the support it enjoys in a significant segment of the business community as well as the environmental community. I hope he will acknowledge the overwhelming margins by which the House and the Senate approved this legislation.

Mr. President, the public supports this bill. Recent public opinion polls make that clear. A recent national poll by NBC and the Wall Street Journal indicated that 67 percent of the American people view cleaning up toxic wastes as more important than tax reform. Another poll by CBS and the New York Times indicated that 67 percent of the American people agreed that requirements for cleaning up toxic wastes cannot be too stringent, regardless of the costs. That is quite a mandate for a strong, well-funded Superfund Program.

This is a clear message to the President from the American people and the Congress that the time has come to declare war on toxic wastes; to sign this conference report into law, and unleash a bold, new attack on the hazardous waste sites that threaten the environment and health of our people.

Mr. President, approval of this conference report is critical to New Jersey. New Jersey has 99 sites on the national priority list, the most of any State. The New Jersey Department of Environmental Protection estimates that at least $500 million over the next 5 years will be directed to New Jersey superfund efforts. However, if past trends hold, New Jersey could receive upward of 20 percent of funds allocable to States. In this case, New Jersey could gain at least $1 billion over the next 5 years.

In addition to the right to know and radon programs included in this bill, I authored numerous provisions in the Senate Superfund bill to address the serious problems New Jersey faces. I am very pleased that these provisions were retained by the conference. These provisions would:

Overturn the Supreme Court's Exxon versus Hunt decision, which preempted State taxing authority for State spill funds, such as New Jersey's. This provision is critical to New Jersey's plans for complementing the Federal Superfund Program with a State supported cleanup program.

Uphold the Boonton decision allowing municipalities to sue for cost recovery under the same Superfund provisions available to States, and to serve as trustees for natural resource damages. This provision permits communities to move ahead with cleanup plans on their own.

Require the replacement of household, not just drinking water, at sites with water contamination. In New Jersey, which is heavily dependent on ground water, this provision will assure that residents of communities with contaminated ground water will not be forced to absorb excessive costs to provide for their daily needs.

Require Federal facilities to submit annual reports to Congress on the hazards and cleanup progress at their sites. In New Jersey, we have had serious problems at some of our military bases. This provisions will alert communities to the status of toxic problems at Federal facilities, and keep Members of Congress informed about progress at these sites.

Allow States to receive Superfund funding for 10 years for operation and maintenance costs associated with cleaning up surface and ground water contaminated at Superfund sites. New Jersey is dotted with such sites, especially in the south, which is heavily dependent on ground water for drinking water supplies.

Provide for State credits for work done at Superfund sites. This will permit New Jersey to move ahead more quickly in cleaning up sites, without forgoing Federal assistance to which it is entitled under Superfund.

Clarify that States may transfer funds to EPA and any Federal agency acting pursuant to an agreement with EPA, such as the Army Corps of Engi-

neers, on an incremental basis for cleanups, and that States be credited with interest earned prior to actual application of the funds as the work progresses. I authored this section of the statement of managers provision clarifying that under section 104, the President acting through the EPA or any Federal agency pursuant to an agreement with the EPA—such as the Corps of Engineers—can fund multiyear remedial projects on an annual basis after obligating the entire cost of implementing the record of decision.

This report language is consistent with the authority of EPA to obligate the full amount of a multiyear project, but to pay contract costs over several years, including funds from future appropriations. This authority, known as contract authority, is available to other Federal agencies, such as the Corps of Engineers, which do large scale construciton projects. Such authority avoids full funding of contracts well in advance of the actual need for disbursements and the holding of large balances of unexpended appropriations for several years.

By permitting EPA to pay the costs of large projects from future appropriations, moneys are preserved for more immediate needs and more projects can be initiated. EPA would get such contract authority from the Appropriations Committees to permit it to enter into multiyear contracts subject to a monetary ceiling. In addition, EPA would request funds to cover contract payments to be made in that year.

Provide health programs, which include health assessments at all existing NPL sites by 1988.

Mr. President, in addition to these initiatives, this bill includes research and development provisions, which include grants for establishing University Hazardous Substance Research Centers. Under section 209(d)(7), these R&D grants can provide funds for renovation of existing buildings, such as those at EPA's Edison, New Jersey facility, if such facilities are used for joint research by EPA and the consortium of universities operating the National Science Foundation Industry/University Cooperative Center for Research in Hazardous and Toxic Substances. This consortium is headquartered at the New Jersey Institute of Technology.

The consortium is also eligible to receive and use such grant money for all other purposes indicated in section 209 of the conference report. Authorizations for research centers in section 118 of the conference report in no way affect the eligibility of the consortium for such section 209 grants. Selection criteria for grantees in section 209(d)(4) and the requirements of section 209(d)(1) operate independently or any section 118 authorizations. Thus, for example, the Administrator shall make grants to institutions of higher learning, such as the consortium, to operate not fewer than 5 hazardous substance research centers, and shall seek to have established 10 such centers, irrespective of section 118 authorizations.

Mr. President, these initiatives will do much to advance Superfund cleanups in New Jersey. It is critical that the Senate lend its full support to the conference report. While the administration has raised objections to the financing provisions, I believe that these provisions will provide a secure funding source for the program, and spread the burden of cleanup equitably. Mr. President, I have consistently opposed fees or taxes on oil imports in the past because they impose an unfair burden on oil dependent States like New Jersey. In this case, Mr. President, I will not oppose this segment of the financing package. In this case, Mr. President, we are not putting the burden of deficit reduction on oil dependent States—which prior proposals contemplated—but are agreeing to impose a marginal fee on domestic and imported oil and earmark these funds for toxic waste cleanup.

Mr. President, I strongly support passage of this bill. I again complement the leadership of the committee, and my colleagues on the ommittee, for sticking with this bill through dark and stormy days and nights. This day is the highlight of my days in the Senate. I urge the adoption of the conference report.

Mr. President, I yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. STAFFORD. Mr. President, I yield 5 minutes to the able Senator from Oregon.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon for a period of 5 minutes.

Mr. PACKWOOD. Mr. President, it has been a good week for the Congress, certainly for the Finance Committee, with the tax bill passing last week and now the Superfund bill. Of course, the way we work in the Senate, the Environment and Public Works Committee had the obligation of determining how the money should be spent, how the program should work, and then it fell to the Finance Committee to find the money that the Environment and Public Works Committee decided was needed. And that was $8.5 billion.

Mr. President, the Finance Committee, in May 1985, 17 months ago, reported a Superfund bill, reported the financing of a Superfund bill which came to this floor and passed overwhelmingly, on this floor. From that time to this we have been engaged in the debate with the House and among the House and among different committees as to how we should conclude. We are now going to conclude and it has been a classic example of James Madison's "Conflict of Interest" and different groups not wanting to be touched or taxed; "Please tax them and don't tax me."

We have heard RUSSELL LONG, our distinguished Senator from Louisiana, say it over and over: "Don't tax you, don't tax me, tax the man behind the tree."

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Everyone wanted somebody else to be taxed. I think the Wall Street Journal summed it up as well as it could be summed up today in reporting the story when they said:

> The agreement ended a year-long battle primarily pitting the oil and chemical industries against a coalition of other businesses over the issue of who would pay for the cleanup program. Both sides promptly attacked the agreement.
>
> A spokesman of the American Petroleum Institute called the oil tax "totally unjustified and unfair."
>
> Jeffrey Nedelman, vice president for public affairs of the Grocery Manufacturers Association, said the broad-based tax "should be rejected by the Congress or vetoed by President Reagan."

Mr. President, if we have succeeded in having a tax that neither the American Petroleum Institute nor the Grocery Manufacturers Association likes, I think we have done well, and I would encourage this Senate to pass the conference report.

The PRESIDING OFFICER. Who yields time? The Senator from Texas, [Mr. BENTSEN].

Mr. BENTSEN. Mr. President, I yield 1 minute to the distinguished Senator from Maine, who made a very major contribution in a very difficult area involving differences with the House. We are grateful for the contribution he made.

The PRESIDING OFFICER. The Senator from Maine [Mr. MITCHELL] is recognized for 1 minute.

Mr. MITCHELL. I thank the distinguished ranking member.

Mr. President, the long and difficult process of reauthorizing Superfund has finally come to an end. Three years ago we began this process with hopes for revitalizing a program that had been abused by EPA and that was in need of more specific direction and increased funding.

Since Superfund was enacted 6 years ago, the problem of uncontrolled releases of hazardous substances has dramatically increased. Before enactment of Superfund, many hoped that Love Canal and Times Beach were exceptions to the way hazardous substances were handled.

Instead, we have learned that practically no State is without some hazardous waste problem, and thousands more are being evaluated for inclusion on the list of Superfund sites. A site contaminated with toxic materials,

once thought to be rare, is now known to be a common occurrence.

Due to this increased awareness of the problem, far greater sums of money are necessary to respond to this public health hazard. On this point we should be absolutely clear: Uncontrolled releases of hazardous substances presents a very real threat to the public health. Superfund is the way to clean up the contaminated water and soil so that our children do not become ill from toxic chemicals.

It has been rumored that the President will veto this bill because he objects to the broad-based tax included in the funding package for Superfund. I refuse to believe that the President would prefer to let American children be injured by contaminated water because of his opposition to a particular tax.

If the President pocket vetoes this bill, Congress would have no opportunity to override the veto and the Superfund Program would be dead for this year. The price of such an action is too high: We cannot permit people to drink contaminated water, to live in areas permeated with hazardous chemicals because of a debate over the appropriate taxing mechanism.

Instead, we need to move forward to implement these amendments as quickly as possible. During the year since the tax expired, activity at Superfund sites has slowed down and in some cases stopped altogether. We need this reauthorization in place immediately so a further slowdown of the program does not take place.

In Maine, for example, recently a potentially responsible party at the largest Superfund site in the State has refused to move forward on clean up, in part because EPA did not have enough money to do the cleanup on its own and then recover the costs from the responsible party. Reauthorization at this time will provide EPA with enough money to clean up the site. There are many more sites in the country, however, where cleanup has not begun because of the reauthorization delay and where clean up is needed to protect the public.

Cleanup activity at sites all across the country will accelerate as the increased funding levels authorized by this legislation become available. This is the only way we have to begin again the process of protecting the public.

There are several issues addressed in this legislation that I would like to clarify. Chief among these issues is section 121, the cleanup standards section which I had the opportunity to play a major role in writing.

In addition, the new section 122 on settlements provides a clearer framework in which EPA may settle cases, where appropriate. There are also issues of particular concern to Maine that should be addressed.

In section 121, the bill governs the selection of remedial action under sections 104 and 106 of CERCLA. Under this new section, remedial actions must assure protection of human health and the environment. Remedial actions must also be selected and carried out in accordance with section 121, and, to the extent practicable, with the National Contingency Plan [NCP]. The President is to select remedial actions that provide for cost effective response.

The provision that actions under both sections 104 and 106 must be cost effective is a recognition of EPA's existing policy under the NCP. An analysis of cost effectiveness begins only after a remedial action has been selected in compliance with the health and environmental protection requirements, permanent treatment requirements, and other standards, requirements, criteria or limitations imposed under the law. The cost effectiveness requirement here, as under current law, does not apply to the selection of a remedial action but rather applies to choosing the least costly alternative method of effectively implementing a remedial action once one has been selected. For example, the selection of a remedial action might involve a choice between various onsite containment alternatives and a permanent treatment technology. Under section 121(b), permanent treatment technologies must be chosen whenever they are feasible and achievable. Otherwise, containment remedies such as a cap over the site and a slurry wall to prevent further leakage might be selected.

Once the remedy has been selected, the cost-effectiveness requirement is applied to its implementation. Implementation of the remedy would involve choosing the least costly methods and contractors which will effectively carry out these alternatives. Criteria to be considered in determining cost-effectiveness include, in addition to the total cost of implementing the remedy projected by each potential contractor, the past record of performance of the persons or firms competing for the project; the relative merits of the various proposals submitted by such persons or firms; and, where permanent treatment technologies are not utilized, the degree to which expenditure of larger sums will enhance the durability of the remedy.

The legislation states that remedial actions selected by the President shall, to the extent practicable, comply with the national contingency plan [NCP]. This language is intended to assure that alleged failures to comply with the NCP shall not be available as a defense to any liability asserted in an enforcement proceeding brought under sections 106 or 107. The language is not intended to provide any authority to EPA or other agencies to fail to apply, to overlook, to ignore or to waive any standard, requirement, criteria, or limitation established under the law.

Section 121(b) establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discrete units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

"Permanent treatment or alternative technologies" means treatment methods that permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants. In addition to the quantitative reduction implied, significant reduction in this context means the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable with available technologies. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them; for example, incineration or neutralizing them; for example, application of chemical or bioengineered neutralization agents. Mere reductions in volume of toxic and mobile substances, by dewatering the substances, for example, would not constitute effective use of a permanent treatment or alternative technology. The purpose of requiring such technologies is to eliminate hazards to human health and the environment on a permanent basis. "Permanent solution" means the application of permanent treatment of solution" means the application of permanent treatment of alternative technologies to hazardous substances, pollutants and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a hazard to human health or the environment, on a permanent basis.

It is a major purpose of this legislation to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions in the selection of remedies, whenever they are feasible. To carry out the goal of implementing permanent technologies and permanent solutions whenever feasible, section 121(b) requires that whenever a remedial action is selected, such technologies and solutions must be assessed. Such assessments are, at a minimum, to take into account the following factors;

First, the long-term uncertainties associated with land disposal: Any land

disposal facility, even one employing the best available technology, is likely to leak. It is uncertain whether the institutional cleanup resources will be available when leakage occurs. There are uncertainties inherent in predicting the size and location of future populations.

Second, the goals, objectives and requirements of the Solid Waste Disposal Act: For example, that act bans most land disposal of hazardous wastes and creates incentives for the development of permanent treatment and resource recovery technologies whenever possible.

Third, the persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents: It is these characteristics which necessitate the use of permanent treatment technologies at Superfund sites rather than containment. Since all containment systems ultimately fail, it is important to assess the hazard timeframe of substances at a site when selecting a remedial action. For example, some substances become more toxic over time, such as those which biodegrade or are transformed to toxic byproducts.

Fourth, short- and long-term potential for adverse human health effects: The assessment should consider the hazards posed by each available remedial action to people who are or may be exposed to hazardous substances, pollutants and contaminants as a result of the remedy chosen. For example, the less permanent the remedy, the greater the potential for adverse health effects as a result of continued or renewed releases over the long term.

Fifth, long-term maintenance costs: Permanent solutions may cost more initially, but may involve little, if any, long-term maintenance costs.

Sixth, the potential for future remedial action costs if the alternative remedial action in question were to fail: Once again, the more permanent the initial remedial action that is implemented, the lower the costs of repairing any failures of the remedy.

Seventh, the potential threat to human health and the environment associated with excavation, transportation and redisposal, or containment: This factor is really a specific subset of the overall health effects consideration incorporated in the assessment and is designed to assure that the selection of remedy take into account possible risks associated with expanding the populations exposed to hazardous substances, pollutants or contaminants when such substances are moved offsite, comparing that risk to the risk posed by containment onsite. The legislation does not require a quantitative, comparative risk assessment, but rather contemplates an objective consideration of all of the factors affecting or potentially affecting human health.

Whenever a remedial action is selected that does not implement a permanent solution, or that does not implement a permanent or alternative treatment technology, the reasons for rejecting such a solution, or for failing to implement such technologies, must be explained. Such explanation must include a discussion of the permanent solutions examined and rejected, and an analysis supporting the proposed solution. The explanation is subject to public comment as part of the remedial investigation and feasibility study.

To encourage the development and implementation of innovative permanent treatment technologies, the legislation permits the President to select such technologies whether or not they have been achieved in practice at other similar sites or facilities. A technology still at the experimental phase could be deemed cost-effective under this provision, as this is a technology-forcing provision. The legislation further permits the President to take into consideration whether residents of the community around a site in general endorse implementation of an experimental technology.

Section 121(c) provides that whenever the remedial action at a site involves an onsite remedy that does not result in a permanent solution, so that hazardous substances, pollutants or contaminants are left at the site, there is a mandatory duty that the President conduct a periodic review of the continued effectiveness of such remedies and report the results to the Congress. Such reviews shall be conducted no less often than every 5 years beginning on the date that remedial action is first initiated. Under these reviews the President shall determine whether the remedial action is sufficient to protect human health and the environment and whether a permanent remedy is now available. If the results of the review are negative; that is, if the remedial action either has failed or appears likely to fail in the future, the President shall take action under section 104 or 106 to improve such remedy. Ordinarily, action under section 106 would be more appropriate if there is any responsible party.

In determining what actions to take as a result of a periodic review, the President shall consider whether permanent or alternative treatment technologies have been developed since the remedial action was first selected and shall implement such technologies wherever possible. The periodic review provision is intended to assure that Superfund cleanups keep pace with developing technologies and that remedial actions are upgraded to take advantage of such developing technologies. It is another technology-forcing provision. The ultimate goal of the Superfund Program must be to implement permanent solution at all national priorities list sites. One way to accomplish this goal is to require periodic review and to assure that sites are not removed from the ambit of the program until such permanent solutions have been implemented.

As noted earlier, section 121 requires that any remedial action selected under section 104 or required under section 106 must, at a minimum, assure protection of human health and the environment. The general standard of "protection of human health and the environment" is the same standard that applies under subtitle C of the Solid Waste Disposal Act. The legislation requires that this standard be the minimum standard met by any Superfund cleanup. The general standard applies to two aspects of a remedial action: First, the degree of cleanup of any hazardous substance, pollutant or contaminant already released into the environment, and second, control of further releases of such substances.

Section 121(d) requires that onsite remedial actions selected or required under sections 104 or 106 must comply with specific standards, requirements, criteria, or limitations established under the Federal laws and under State laws.

These specific standards, requirements, criteria, or limitations include those established by all Federal environmental legislation, including the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, and the Solid Waste Disposal Act. The laws to be applied also include any State environmental or facility siting law requirement that is more stringent than a comparable Federal requirement, if the State identifies such law to the President in a timely fashion. This, of course, includes any State requirement where there is no comparable Federal requirement.

The list of Federal and State laws established by the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria, or limitations that must be applied to Superfund remedial actions. If the President, or a State, or the courts determine that other, unlisted laws contain standards which are legally applicable, or relevant and appropriate, such standards shall apply to such remedial actions. Where two applicable or relevant and appropriate Federal or State standards, requirements, criteria, or limitations pertain to the same situation, or to the same hazardous substance, pollutant or contaminant, the more stringent one shall be used in selecting a remedial action. For example, a ground water residue guidance level

being proposed as an amendment to the Safe Drinking Water Act in the reauthorization of FIFRA, could not be used as a less stringent standard for a remedial action.

The Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] does not provide for preemption of any legally applicable requirement established under any other Federal or State law. For example, all requirements contained in subtitle C of the Solid Waste Disposal Act, commonly known as [RCRA], currently apply as a legal matter to onsite remedial actions conducted under CERCLA, in such situations as when the facility is a facility already covered by RCRA or hazardous wastes are exhumed and redeposited at the site. The legislation reiterates the effect of current law that the specific standards, requirements, criteria, or limitations already legally applicable to Superfund cleanups must be applied to remedial actions selected or required under sections 104 or 106 after the date of enactment. RCRA facilities must continue to meet RCRA standards, irrespective of other provisions in this law, even if the site is listed on the national priorities list.

Section 121(d) provides that standards, requirements, criteria, or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate". The first test of relevance and appropriateness is whether the standard, requirement, criteria, or limitation at issue was developed for the same environmental media as the media contaminated by the Superfund site. Standards developed under the Clean Water Act and the Safe Drinking Water Act would therefore be relevant both to contaminated ground and surface water at a Superfund cleanup, if not already legally applicable. Similarly, Clean Air Act ambient air standards would be relevant to air emissions of hazardous substances, pollutants, or contaminants released from a Superfund site.

The second test of relevance and appropriateness involves a determination of which environmental media serve as pathways for actual or potential human or environmental exposure to a hazardous substance, pollutant or contaminant. Once such pathways are determined, the purposes for which the standard, requirement, criteria, or limitation at issue was developed should be considered. Such standards should be applied whenever the purpose for which they were developed involve reduction of the contamination of such pathways to safe levels. For example, Safe Drinking Water Act standards used to protect public drinking water supplies may not be appropriate for application to a briney aquifer, which would never be fit for human consumption even if it was cleaned up. At the same time, aquifers which may have any potential future use as a source of water supply should be cleaned up to such standards whether or not they are currently used or considered for drinking water supplies.

It will be important to consider the purpose for which a standard was developed in determining its relevance to Superfund cleanups. The purpose of the standards developed under the Safe Drinking Water Act, for example, is to protect people from drinking contaminated water. That act applies these protections at the tap. Of course, many of these standards are made legally applicable to Superfund cleanups, as part of the ground water protection standards under RCRA. Even where not legally applicable, they may be relevant, and in order to effectively utilize these standards in selecting a remedial action at a Superfund site, they must be applied not only at the tap, but wherever the contaminated water is found so that the contamination can be reduced to safe levels once the cleanup is completed. Section 121(d) prohibits writing off potentially useful ground water supplies that have been contaminated by Superfund site. Such natural resources are both finite and irreplacable. The purpose of the Superfund program is to reclaim such contaminated resources wherever possible.

Finally, in determining the relevance and appropriateness of standards, requirements, criteria, or limitations, EPA should consider not only pathways exposure but also the impact on the environment of contamination from a Superfund site. Environmental contamination must be reduced to safe levels both to protect ecosystems and to prevent the public health threats of indirect exposure to hazardous substances, pollutants or contaminants. Perhaps the most obvious example of this latter phenomenon is contamination of the human food chain by releases from Superfund sites.

Section 121(d) specifically requires application of maximum contamination level goals (formerly known as recommended maximum contamination levels [RMCL's] developed under the Safe Drinking Water Act whenever they are relevant and appropriate. The Congress chose to apply RMCL's instead of relying only on the legally applicable maximum contamination levels [MCL's] because RMCL's are based solely on public health considerations. MCL's can reflect the modification—and loosening—of such health-based standards on the basis of cost considerations that should not be applied to Superfund cleanups. Use of MCL's for Superfund cleanups could result in cleanups that do not protect human health and the environment.

The legislation specifies the factors that are to be considered in determining whether water quality criteria developed under the Clean Water Act are relevant and appropriate. These factors are the designated or potential use of surface or ground water, the environmental media affected, the purposes for which such criteria were developed, and the latest information available. Water quality criteria are essential to a comprehensive system of Superfund cleanup standards because such criteria establish maximum exposure levels for some 140 chemicals found most frequently at Superfund sites, while all the analogous standards established under other major Federal environmental laws cover only some 20 to 30 such chemicals. Water quality criteria typically contain three different exposure levels (or numbers) depending on whether the water at issue will be (a) consumed by people; (2) consumed by people and used to support aquatic life, and (3) used only to support aquatic life.

In determining how to apply such criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially usable as a source of drinking water is contaminated by water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption. The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate.

This provision affects the selection of the appropriate exposure level and does not mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

In certain specified and limited circumstances, section 121 permits use of a regulatory process for setting alternate concentration levels [ACL's] which was developed by EPA under RCRA. As currently implemented by EPA, the ACL process allows the owner or operator of a RCRA facility to demonstrate that some alternative level of contamination other than background does not threaten human health and the environment. I do not believe this ACL process is sound policy under RCRA, nor in my opinion is it authorized by law. This bill does not specifically address the RCRA ACL process, however. Instead, this

bill provides the opportunity to demonstrate an ACL during the course of Superfund cleanup under specified conditions. The first such condition is that the ACL process should only be used when no other previously established standard or level of control—for example, water quality criteria or RMCL—applies to the hazardous substance, pollutant, or contaminant at issue. If any other standard or level of control is legally applicable, or relevant and appropriate, establishment of a separate ACL is both necessary and inappropriate.

A second condition on the use of ACL's is that they must be based on a point of human exposure that is not located beyond the boundary of the Superfund facility. The facility boundaries are in turn to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site. "Facility" is defined under CERCLA as the place where hazardous substances, pollutants, or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination caused by a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility," where hazardous substances, pollutants, or contaminants have come to be located. The remedial action called for in the RI/FS will then clean up the entire facility, and prevent future releases from such facility. Neutral or buffer zones which have not yet been contaminated therefore cannot constitute a "facility" at the completion of the RI/FS.

There is a narrow exception to the rule that the point of assumed human exposure use to establish and ACL cannot be beyond the facility boundary. Three conditions must be met before a different point of exposure may be used:

First. The first is that the contaminated ground water at the site is known to feed into a source of surface water, for example, a lake or stream, that is quite close to the facility. Eventual discharge into distant water bodies does not qualify.

Second. The second is that at the specific point where such ground water first enters the surface water, there is (or will be) no statistically significant increase in hazardous constituents, nor any accumulation of such constituents downstream. Such accumulation could occur downstream in either the water sediment or biota (due to bioaccumulation). This second condition can only be satisfied if the hazardous constituent in the ground water is not measureably increased at the first point where the ground water feeds into surface water.

Third. The third condition is that a legally enforceable measure must be in place to preclude human exposure to contamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place and cannot be reversed for as long as the waste remains hazardous.

Under the ground water protection standards of RCRA, in the absence of an MCL for a substance, the standard would be the background level. A ground water residue guidance level (if different than an MCL) is not a starting point for developing such standard.

Section 121(d) also incorporates and strengthens EPA's "offsite" policy. Whenever a remedial action involves the movement of hazardous substances, pollutants or contaminants offsite, they may only be transferred to a facility operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, the Toxic Substances Control Act or other Federal law such as the Atomic Energy Act). Such substances may be transferred to a land disposal facility only if the President determines that two conditions are met: First, the unit receiving the substances is not leaking into ground or surface water or soil; and second, all releases from other units at the facility are being controlled by a corrective action program. Although this provision does not require that a land disposal facility have received a final RCRA permit before receiving Superfund wastes, it is intended to assure that only the most secure facilities are chosen so that the Superfund problem is not compounded. In this regard, such facilities can ordinarily only meet the second condition imposed by the legislation if the corrective action has already been performed in accordance with sections 3004 (u) and (v) and 3008(h) of the Solid Waste Disposal Act.

Section 121(d) provides that a remedial action which does not comply with a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation may be selected only if the President makes one or more of six affirmative findings. Such findings must be made on a site-by-site basis and are subject to the public participation requirements of the legislation.

The first finding is that the remedial action selected is only a phase in a longer-term remedial action, when the longer-term remedial action will complete cleanup at the facility and will meet all applicable or relevant and appropriate standards, requirements, criteria, or limitations. This provision gives the President some leeway in conducting phases of cleanup, but should not be read to permit indefinite delays in final cleanup.

The second finding is that compliance with a requirement would result in greater risk to human health and the environment than alternative options. This finding should apply to a few, unique sites where application of available cleanup technologies would cause uncontrollable disruption and release of hazardous substances, pollutants or contaminants and would therefore pose a greater risk to human health and the environment than simply securing such substances where they are located. For example, the national priorities list contains a few sites that are major harbors or bays. Dredging such sites in an effort to remove accumulations of hazardous wastes may, in some circumstances, pose greater risks to human health and the environment than employing alternative containment options.

The third finding is that compliance with such requirements is technologically impracticable from an engineering perspective. Once again, this finding should apply to a small number of relatively unusual situations where no technologies for hazardous waste treatment, destruction, or disposal have been developed that would meet the requirements. In such cases, the periodic review provisions of the legislation should be employed to assure that as such technologies are developed, they are employed at the facility. Cost is not an appropriate consideration under this finding.

The fourth finding is that use of a method or approach other than one required under an otherwise applicable standard, requirement, criteria, or limitation will achieve an equivalent standard of performance. This provision is designed for situations where a new or alternative technology not contemplated under existing regulations would work as well as the established approach. For example, RCRA might require placement of double liners at the bottom of land disposal facilities, but the hazardous substances, pollutants, or contaminants at a Superfund site may be susceptible to a new treatment technology that solidifies or neutralizes them in place. If such alternative technologies, together with the locational characteristics of the site, will prevent migration of any hazardous constituents into ground or surface water near the site, an alternative technology may be used in lieu of a double liner.

The fifth finding is that, with respect to provisions of State law, the State has not consistently applied the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State.

The sixth finding reflects a recodification of the policy in current law commonly known as fund balancing. This is limited to cleanups completely funded by the Superfund under section 104. Under this provision, the President may—under limited circum-

stances and out of absolute necessity—select a remedial action that does not meet a specific Superfund cleanup standard if there will not be sufficient resources left in the fund to respond to sites posing more immediate and severe threats to public health and the environment. Fund balancing should be invoked with the utmost caution, and only where there is an irreconcilable conflict between the costs of a fully complying cleanup and the fund's ability to address sites posing much more serious hazards. Any such finding should be accompanied with a full analysis of the manner in which the President evaluated such relative hazards. It is important to note that where the money to pay for a remedial action is provided by both the Federal trust fund and a private responsible party or parties, the fund-balancing finding does not apply.

Section 121(e) provides that no Federal, State, or local permit shall be required for any portion of a remedial action that occurs onsite, provided that the remedial action is in complete compliance with the cleanup standards contained in section 121. The purpose of this provision is to streamline the cleanup process by exempting remedial actions from the procedural requirements of Federal, State, and local permit programs, while still preserving the applicability of the substantive health and environmental standards that are implemented by such programs. While EPA, private parties, or others conducting remedial actions do not have to obtain a formal permit, they are still required to meet whatever substantive standards the Federal Government and State and local governments apply in other contexts through the vehicle of permitting.

The legislation also clarifies the States' authority to enforce any Federal or State standard, requirement, criteria, or limitation applied under its provisions to remedial actions. The States' ability to enforce such standards safeguards their ability to insist, through enforcement actions in Federal district court, that the goals of their permitting programs are met, even if the technical requirement to obtain a permit is waived in the context of any given cleanup.

Under CERCLA there is no preemption of State standards that may apply to response actions. States are free to enforce such standards through court action. To further assure that all State standards, requirements, criteria, and limitations are met by remedial actions selected by the President, even though formal permits are not required, section 121(f) requires EPA to promulgate regulations providing an opportunity for meaningful State involvement in the formulation of remedial actions.

No funded financial remedial action can ever go forward without State agreement as to the cleanup standards, because of the ability of the State to withhold its share of the funding. In the context of remedial actions secured under section 106, or performed at facilities owned or operated by a Federal agency or department, the State must be given an opportunity to concur in the selection of the remedy at least 30 days prior to publication of the final remedial action plan.

If the State does not concur, and the remedial action plan is approved over its objections, the State may then intervene in a proceeding brought under section 106, or maintain an action against the Federal agency or department, to seek reversal of the final remedial action decision. The challenged decision shall be overturned unless it is supported by substantial evidence. This standard is different than the arbitrary and capricious standard that applies under section 122 of the amendments and is intended to subject the validity of the remedial action decision challenged by the State to more searching scrutiny by the court.

The effective date for section 121 of the amendment is the date of enactment, with two limited exceptions. EPA currently embodies final remedial action decisions in a document called a record of decision, or ROD. The amendments provide that the requirements of section 121 do not apply to remedial actions covered by ROD's signed prior to the date of enactment. Any remedial action decision not explicitly addressed in the ROD does not fall under this limited grandfather provision. Further, if any ROD is ever reopened after the date of enactment to reconsider, modify, supplement, or otherwise change in any manner the remedial action that was selected, the requirements of section 121 apply to the entire ROD, and not just the reopened portion. For ROD's signed between the date of enactment and 30 days following the date of enactment, the legislation requires the Administrator to certify that the remedial action selected conforms with section 121 to the maximum extent practicable. This requirement places a nondiscretionary duty on the Administrator, carrying out the responsibility of the President under section 121, to apply the requirements of section 121 in selecting remedial actions during the 30-day period following enactment.

The standards provision is clearly a major improvement over current law, which is silent on this issue. The inclusion of a specific standards section, however, creates the need for enforceability of the standards. The Senate bill barred any review of a response action before it was complete in order to prevent responsible parties from using litigation to delay cleanup. The conferees agreed to a much more detailed standards provision than had been included in the Senate bill.

The new provision gave rise to concerns that citizens would not be able to enforce the standards until the remedy was complete. In some cases, pumping and treating of ground water could take decades and thus citizens would be barred from suit until it was too late to effect an improved remedy as provided under section 121.

The conferees agreed that some preimplementation review would be provided so that citizens would not be disadvantaged by having to wait until cleanup was complete. Nuisance suits would, of course, be permitted at any time. A suit to compel compliance with the CERCLA standards would be permitted, under section 113(h) after each stage of cleanup is complete. In this way, an entire cleanup need not be complete before a citizen can sue. Similarly, responsible parties cannot halt cleanup because of concerns that the cleanup is excessive.

In considering whether citizens' suits should lie for cleanup, it is important to consider the equities of the situation. Citizens are suing to compel compliance with cleanup standards that are designed to protect the public health. Responsible parties, on the other hand, may be suing to halt cleanup because of concerns that the response action is too costly.

Clearly the risk to the public health is more of an irreparable injury than the momentary loss of money. If a response action is proven to be too expensive, responsible parties can be reimbursed by the fund for the excess cost. The public, however, has no recourse if their health has been impaired. For this reason, courts should carefully weigh the equities and give great weight to the public health risks involved.

Section 120 addresses cleanup of sites that are at Federal facilities. Many States have Superfund sites at Federal facilities, including Maine, Florida, California, and New York. Three Superfund sites in Maine—Portsmouth Naval Shipyard, Loring Air Force Base, and Brunswick Naval Air Station—are at such facilities. I am therefore particularly concerned that this section be implemented appropriately.

My primary concern about Federal facilities has been the difficulty States such as Maine have had in requiring Federal agencies to pay State fees and penalties as do other responsible parties. In Maine, there is currently pending litigation regarding the Portsmouth Naval Shipyard in which the State seeks penalties and fees owed by the Department of Defense to Maine.

These kinds of issues are clarified in section 120, which states in subsection (a)(1),

Each department agency, and instrumentality of the United States . . . shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, . . .

As stated in the statement of managers agreed to by the Superfund conferees:

This clarifies that CERCLA, together with RCRA, requires Federal facilities to comply with all Federal, State and local requirements, procedural and substantive, including fees and penalties, except as provided in section 121.

Section 6001 of the Resource Conservation and Recovery Act [RCRA] clearly states that Federal agencies are to be "subject to, and comply with, all Federal, State, interstate, and local requirements, both substance and procedural." This section, together with section 120 of CERCLA, can leave no doubt that Federal facilities are subject to State laws, including State fees and penalties.

In addition, section 120 clarifies that sovereign immunity is broadly waived. By clarifying that Federal facilities are to be treated as nongovernmental entities, sovereign immunity is waived. Thus, Federal facilities are subject to all State administrative and court procedures and sanctions, including penalties and injunctions.

I am pleased that the conferees chose to clarify these points. It is essential that the Government elected by the people to protect them not to be excused from protecting the public health under a Federal statute such as Superfund. Such double standards are anathema to those of us who believe that the Federal Government's primary task is to protect the public, not to contaminate it.

Another area of personal interest to me is section 122, which addresses settlements between EPA and responsible parties. This section explicitly authorizes EPA to enter into settlement agreements with responsible parties in limited circumstances. This authority is discretionary, signifying a change from the Senate version which required EPA to explore the settlement option.

The question of whether EPA should settle cases with potentially responsible parties [PRP's] had a long history. As many will remember, it was sweetheart deals that EPA negotiated with PRP's several years ago that led to the resignation of Rita Lavelle and Anne Burford. This bill establishes the framework in which EPA can negotiate tough settlements with PRP's in the interest of cleaning up a site more quickly. The settlements provision is not a carte blanche for the agency to cease enforcement activity and to agree to any offers by PRP's.

Section 122, to the contrary, envisions an agency that uses all of its enforcement tools to persuade PRP's to clean up a site quickly and effectively so that people are no longer exposed to hazardous substances. The agency was involved in negotiations on this section, as well as other sections of the bill, and should have a firm grasp of the concerns I and other members of the conference committee expressed about the risks of future sweetheart agreements. I cannot stress too strongly my view that this section is designed only to provide settlement guidance to the agency. The purpose is to clarify the limited circumstances in which settlements are appropriate; the purpose is not to encourage EPA to settle as many cases as possible.

A court's authority to review consent decrees is not diminished or modified. There continues to be judicial review of these decrees as a check on the agency's exercise of its discretionary authority to enter into settlement agreements. The court can review the decree to determine whether the decree is in the public interest.

The settlement should only be undertaken if the President determines that the responsible party will properly undertake a response action, and if such a settlement is practicable and in the public interest. These kinds of requirements clarify that the President is to consider the quality of the arrangement. A responsible party may be agreeable to undertaking an approved response action, but due to lack of experience, financial resources, or the type of cleanup involved, settlement may be an inappropriate alternative.

A decision by the President not to settle a case should not be an unusual occurrence, nor should the President feel obligated to try to settle every case. Settlement should only occur if the President is satisfied that the site will be cleaned up more quickly and at least as completely as it would be if the fund were to perform the cleanup. Without doubt, settlement of cases is not an opportunity to avoid any of the cleanup requirements or procedures of the act.

Section 122 authorizes the President to enter into covenants not to sue. Such covenant is clearly reviewable by a court and should be carefully scrutinized, since a covenant not to sue may excuse responsible parties from some obligation. It is expected that such covenants will not be agreed to often, since any reduction in responsibility by the responsible party is a proportional increase in the Federal responsibility to pay for any future response costs.

Consistent with this view is the requirement under section 122(c) of CERCLA that more permanent remedies be granted more complete covenants not to sue. This is EPA's current policy, as presented to the conferees, and should be assiduously implemented.

Section 122(e) of the act sets forth the settlement procedure. None of the information described in paragraph (1) is to be provided if it is unavailable. For example, under section 122(e)(1)(B) and (C), the President is to provide PRP's with a ranking of substances contributed by each PRP at a site. This could be an onerous burden for the Agency unless it is limited to information that is reasonably at hand. Similarly a release of such information could place the President at a serious disadvantage when litigating cases. Settlement procedures should not be used to diminish the Government's ability to litigate.

The President is authorized under section 122(e)(3) to prepare nonbinding preliminary allocations of responsibility [non-PAR's]. Preparation of such a non-PAR is discretionary, and the costs of preparing the non-PAR shall be borne by the PRP's. If a PRP makes an offer based on the non-PAR, the President may reject the offer. This is a change from the Senate bill, which stated that a rejection by the President of an offer of more than 50 percent of the non-PAR would mean that the President would bear the burden of proof in court, should a PRP sue the President for such rejections.

The conferees agreed to drop this provision and left the entire process discretionary. In doing so, the conferees did not endorse the 50 percent requirement. The debate over the appropriate percentage was not resolved and so the reference was dropped. The President should not consider 50 percent offers to necessarily be offers worth considering or settling. Many conferees believes that a higher percentage should be the threshold for serious settlements.

Section 122(e)(6) clarifies that no PRP can undertake any remedial action at a facility without authorization by the President. This is to avoid situations in which the PRP begins work at a site that prejudges or may be inconsistent with what the final remedy should be or exacerbates the problem.

Section 122(f) addresses convenants not to sue. The President is authorized under paragraph 1 to provide such convenants where they are, in the public interest and would expedite response action consistent with the NPL, where the PRP is in full compliance with a section 106 consent decree, and the response action has been approved by the President.

Each of these elements must be present and should be carefully scrutinized by the President. These are requirements not easily met and the first of them, the requirement that the covenant not to sue be in the public interest, may be one of the most difficult tests to meet.

The President should be restrained primarily by protection of the public health and the environment. This is of particular concern in this context in which we know relatively little about future behavior of contaminants. Ground water that was believed to have been cleaned up 20 years from now may be discovered to be contaminated because a contaminated plume was missed in the monitoring. Similarly, technologies we rely upon today may tomorrow be found wanting and presenting new or greater risks to the public then we believe exist today.

In addition, whatever release is provided by the covenant not to sue is an obligation that the Federal Government may have to absorb. Any error by the President in granting the covenant not to sue will create greater problems and expense for the Federal Government later.

The rarest of all covenants not to sue should be the paragraph 2 special covenants. These covenants are to be granted where there is permanent treatment. Permanent treatment is narrowly defined and includes treatment that destroys, eliminates, or permanently immobilizes the hazardous constituents of a substance. It clearly does not include permanent storage in a vault or other container, since there is no permanent immobilization or change in the character of the hazardous substance. Permanent treatment means that no person would run any risk of being exposed to a hazardous substance after treatment. In the case of permanent storage, the nature of the hazardous substance remains the same, but the possibility of exposure is reduced. This is clearly insufficient to qualify as permanent treatment and a special covenant not to sue under this paragraph.

The President should grant such a covenant only in the most rare of circumstances, since the covenant is by nature broader than the paragraph 1 covenant and the future responsibility of the United States is proportionately greater. In any covenant not to sue, as clarified in paragraph 4, such a covenant cannot be agreed upon until the President determines that remedial action has been completed in accordance with the requirements of the act. None of the covenants can excuse compliance with CERCLA requirements.

If there is any question about the effectiveness of the treatment, the covenant should not be granted. In addition, if less major issues are in question, the President may include conditions in either paragraph 1 or paragraph 2 covenants. Conditions, like the decisions to enter into a covenant not to sue, are to be in the public interest and may be based on a variety of factors, including those listed in paragraph 4.

These factors highlight the need to be sure that the technology or treatment will perform as promised and that there is sufficient knowledge about the method chosen to assure such treatment or technology will be correctly implemented and achieved specified results.

In addition, it is important for the President to ask a basic question: Who will pay if there is a problem in the future? So little is known about much of the contamination at Superfund sites, that it is difficult to be sure that no future liability will occur. For example, the President may enter into a covenant not to sue with a PRP at an NPL site, and the responsible parties treats the soil and ground water and removes the contaminants in the agreed upon manner. Years later it may develop that the monitoring missed a major plume and the ground water serving a town of 10,000 people is contaminated. Who would pay to clean up the ground water and provide water to town residents? Such a covenant may on its face not be in the public interest as well, since such a population could have been at risk.

In any event, future enforcement action should be an option under the covenants to assure that the public health is protected. From the perspective of the public, if the President does not use every option at the President's disposal to protect the public health, then the public is placed at a severe disadvantage.

The final Superfund bill also includes the legislation I have developed over the past year concerning research of the health effects of exposure to radon gas. Radon is a naturally occurring gas which is found in Maine as well as other areas of the country. It can build up inside homes to levels which pose a health risk. The EPA estimates that between 5,000 and 20,000 people die each year of lung cancer caused by exposure to radon gas. This legislation directs the EPA to establish a research program addressing radon and other indoor pollutants.

EPA will also conduct a program to demonstrate a range of measures to reduce radon levels in homes in different parts of the country. This demonstration program will result in the kind of practical information on how to control radon which is badly needed by homeowners in Maine and other parts of the country.

Other provisions of the legislation provide for a national assessment of the extent and seriousness of the radon problem in the United States and an overall report to Congress on radon and related pollutants within 2 years.

This legislation benefited from the contributions of a number of people from Maine. I held a hearing on this issue in Augusta, ME, last year and heard testimony from radon experts from the University of Maine, the Maine Medical Center, several departments of the State government, and citizens who have discovered high levels of radon in their homes.

I will play an active role in overseeing the implementation of this important research and demonstration program over the next several years.

Too many citizens have already had to familiarize themselves with the alphabet soup of chemical names because they or their families were exposed to the hazardous substance. The purpose of CERCLA is to protect the public from such exposure and to assure that the Federal Government is an advocate of the public in assuring that Superfund sites are cleaned up and responsible parties are truly responsible.

I will take a few seconds to express my appreciation to the chairman of the committee, Senator STAFFORD, the ranking member, Senator BENTSEN, and all of the other members of the committee who worked so long and so hard over what seemed like an endless process to achieve this result; the chairman of the Finance Committee, as well; and I see Senator MOYNIHAN and of course the two Senators from New Jersey who perhaps have been foremost among all Members of Congress in calling attention to this problem, insisting on and helping to shape what I hope will be a far-reaching solution to the problem.

Senators BRADLEY and LAUTENBERG have done a great job. Senator LAUTENBERG is a member of the committee, the conference committee, and did a great deal. Without his efforts, there would not be a bill here today.

I thank you.

I yield back the remainder of my time.

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. I yield 2 minutes to the very able Senator from New York.

Mr. MOYNIHAN. I thank my friend, the distinguished chairman of the Environment and Public Works Committee, who has lead us in our efforts to respond to the hazards of abandoned toxic wastes. Claiming no pride of authority, he brought our initial efforts to fruition 6 years ago, in December of 1980, with the Comprehensive Environmental Response Compensation and Liability Act—the Superfund. Love Canal and Niagara Falls, NY, first brought the matter to our attention; it commands it still.

With the second round of Superfund authorization, we provide the institutional framework for the cleanups that will follow in the next half-decade; they merit the substantial fi-

nancing provisions contained in the bill.

Since Superfund's initial passage, the Solid Waste Disposal Act Amendments of 1984 have improved our ability to rid ourselves of these substances as we create them. We must continue to pursue that goal even more effectively in the years ahead as we work to clean up those that were not so carefully disposed of.

I also hope, Mr. President, that we will find time to obtain a true accounting of where the money we appropriate for cleanup is going from the Environmental Protection Agency.

It seems clear that far too much is going to litigation, and far too little is going to mitigation.

That is something that we have addressed to some extent in the current legislation, but it remains something the Committee on Environmental and Public Works should inquire into at some length, perhaps even at some leisure, in the years ahead.

With the long-delayed passage of the current bill, we make it clear that this body recognizes that the public cleanups, and that allowing this situation to continue is simply intolerable. At last, we can finally say to the EPA: "Here is the wherewithal, here are you instructions—now get on with it, and do it properly."

The problem of carelessly disposed of hazardous wastes did not arise overnight. In New York, we knew something was wrong in the early 1970's; on August 7, 1978, when President Carter declared a Federal emergency at a place called Love Canal, the entire country knew.

Throughout the 1930's and the 1940's, all manner of hazardous substances had been buried in what was once meant to be a canal for navigation and for power. In time, through an unfortunate sequence of events, it became the site for a school and for a neighborhood. And in the time since we discovered it for what it was, it has become through another unfortunate sequence of events, a symbol of how poorly both private industry and our Government have coped with the hazards of improperly disposed hazardous wastes.

In 1980, I was an original cosponsor of the Comprehensive Environmental Response, Compensation and Liability Act. We began the slow process of searching for other potential "Love Canals", and learning how to make them safe again. Little did we know in 1980 how many there would be, how long the cleanups would take, or how much they might cost.

The Environmental Protection Agency has had a slow start. Perhaps half a dozen of our most hazardous toxic waste dumps have been cleaned up, but the Agency has said that 541 more deserve places on the national priority list of the worst sites. EPA estimates that the number may grow to 1,500 or 2,500; the Office of Technology Assessment believes the number could reach 10,000. And these numbers do not include tens of thousands of lesser dumps that will ultimately be left to the States for cleanup. In New York alone, we have found over 1,400 candidate sites so far.

In 1980, we thought that $1.6 billion spent over 5 years would bring us well along the way to solving this problem; now we know better. If the EPA estimates are right, the final cleanup cost for only the most hazardous dumps could reach $22.7 billion, and their numbers are very optimistic. Probably unrealistic. One thing we have learned in 5 years is that making good on our commitment to protect the public health is going to cost a lot more money. The $9 billion provided in this legislation is by no means too much.

We also have learned that we cannot expect rapid results—it takes a long time to determine just what the problem is at each site, how big the problem is, and how best to solve it so as to protect the public. Six sites completed in as many years is far—very far—from good enough, but there are signs that the EPA now takes its responsibility to protect the public health more seriously than perhaps it once did. It is abundantly clear, however, that despite the improvements that have been made, the vast bulk of our toxic waste problem will remain with us for years to come.

But mostly, have learned how little we really knew about how best to rid ourselves of this mess. Six years after the Superfund Program began, and 8 years after the Emergency declaration at Love Canal, we still do not have good methods for cleaning up many of these hazardous sites—including the one at Love Canal.

Today, unlike 1980, there are a few things that we know we can do, to make the best of this situation.

First, we can act decisively to reauthorize this program before the existing program is altogether lost.

Second, we can provide a responsible sum of money for the next 5 years to keep these cleanup efforts proceeding. The package of taxes that the funding conferees have finally produced will allow this and is deserving of our support. Although there are portions of it I do not like, particularly the ill-advised oil import tariff, and would have preferred a "waste end" tax on the disposal of hazardous wastes this financing package is necessary and adequate to the task, and I urge all of my colleagues to support it.

Third, we can refine the program based on what we have learned over the last 5 years; this bill does so admirably. By giving further guidance to EPA, better defining the standards and procedures to be followed in remediation, and providing money at levels more realistic than those we specified in 1980, we go far to improve the prospects for our Nation's well-being.

And fourth, we can establish a program to help give us what we do not now have, new technologies that work in the field, to help us to do the job more effectively in the next 5 years. Mr. President, this bill includes a provision I authored, along with my colleague Mr. TORRICELLI in the House, to establish a program of applied research and development within Superfund to do exactly that. It will give us the tools to do the job properly.

This new program will advance our knowledge of how best to clean up hazardous waste sites. Primarily a field demonstration program, it gives EPA the authority to try promising new technologies at Superfund sites. With this amendment, they are directed to do so where it makes sense to do so.

Mr. Chairman, nothing makes more sense than Congress reauthorizing the Superfund Program with the solid, sensible legislation we have before us, and with dispatch. The citizens of Love Canal and communities across the country are still waiting.

Mr. STAFFORD. Mr. President, I now yield to the assistant majority leader, Mr. SIMPSON.

The PRESIDING OFFICER. The assistant majority leader, Senator SIMPSON, is recognized.

Mr. SIMPSON. Mr. President, it was my privilege to serve as a member of the conference committee on Superfund. I said "privilege"—for it was not always fun. In fact, it was kind of a grisly experience, actually. That is grisly with an "s" instead of a "z," and maybe it should be both.

But I want to commend our chairman, Senator STAFFORD, who was extremely patient, as we went through some pretty heavy water on that one. I have never seen a more remarkable bipartisan approach to a very tough issue. The conference started on a note in the House of a really crashing kind of activity. Chairman DINGELL was superb, fair, tough. I have learned to have great respect for that gentleman. He meets all of the attributes of the reputation we know of him. It was a treat to work with him.

I want to say that Senator BENTSEN was extraordinarily patient, along with Senator STAFFORD; GEORGE MITCHELL added a great deal to the effort. In fact, there were times with his remarkable ability to probe and zero in on things that he came up with solutions to things that we were just enmeshed in. I want to commend my friend from Maine. DENNIS ECKART, of Ohio, who was a splendid participant, and a very bright man that followed it, all so thoroughly; and Congressman DAN GLICKMAN; Congressman NORM LENT, from New York; and then, of

course, STROM THURMOND, our remarkable Judiciary chairman, because we had judiciary issues before us as well as environment and public works issues.

Senator LAUTENBERG, too, gave a great bit of assistance in his unique and spirited way. I have been in a lot of conferences. There have been a lot of conferences where you get in with the House and you get hammered around pretty heavily. This was an open, direct, and sometimes a confrontational conference, but it was all very worthwhile. This is good piece of legislation.

I hope this administration will not think in any way of vetoing this package. I do not say that as a threat. I say it as total reality. If we are going to mess around with this one, after what we have just been through yesterday on South Africa, we will never see anything like it again. It will not come again. The chemistry and the dynamics will not be there to get this kind of Superfund next year. Lots of things could change. I am not talking about parties. I am talking about the whole scheme.

My commendations also go to Senator PACKWOOD, and again that steady Senator has done his usual marvelous job. I think it would be a very bad mistake if the President of the United States were to veto this—may I be yielded an additional 30 seconds?

Mr. STAFFORD. I yield to the Senator an additional minute.

Mr. SIMPSON. I glean the excitement in the chairman as I refer to avoiding veto and I thank the chairman.

So in this additional minute I say honestly that there will be a great misreading of the intent of this body if there is any mention or the actuality of veto. The funding is there. It is not what we all like. But it does save some industries that have had to take the whole load before. I think it is balanced. I think it is fair. But the programmatic changes are what is going to bring about the cleanup—the cleanup we all ask for—and then good release language, de minimis language, and altogether a very proper scheme.

I just tell you again it was a great privilege for me to serve on that conference committee, and a great treat to see a bipartisan result such as we have before us. It is a good package.

I thank the chairman, and I thank the ranking member.

Mr. President, I am pleased to rise in support of S. 2840, the Superfund reauthorization bill which I have cosponsored, along with Senator STAFFORD and other members of the Environment and Public Works Committee.

This legislation is the result of a tortuous legislative process. The struggle for reauthorization began in 1984, and it became more pressing in late 1985, when the program's taxing authority expired. Now, nearly a year later, we are considering a complete reauthorization—the Senate Finance Committee and the House Ways and Means Committee have worked out their difference by crafting an intelligent Superfund taxation proposal.

The Environmental Protection Agency has been given an impossible task: To clean up the Nation's hazardous waste sites without clear congressional guidance on what the new statutory ground rules will be. This legislation, which is the result of more than 9 months of House-Senate conference activity, had a great deal of participation from the Administrator of EPA, Lee Thomas, who assures us that it is workable. While all of us, including Mr. Thomas, would have preferred different outcomes on various parts of the legislation, we came to a conclusion and we now should strive to let EPA do its work. When one considers that the program has been under a cloud since the public problems of its stewardship in 1983, and then was revamped by Lee Thomas in his role as Assistant Administrator for Solid Waste in 1983–84, and was then caught up in the congressional reauthorization maelstrom since that time, one can see that the troops over EPA should be given the time to put together the new program as soon as possible. Since this legislation includes many areas in which EPA will have to have management adjustments to meet new tasks, it is critical that we give them the tools to finish the job of making the Nation safe from the effects of past hazardous waste disposal practices.

I would like to bring attention to several provisions of this legislation that are of particular importance, beginning with the new provisions for health authorities.

As my colleagues may remember, I have had the challenging task over the years of working very hard on issues related to toxic torts and victims compensation in Superfund, as well as in the nuclear arena and in the agent orange debate. No set of questions is more important to me than these, because of the profound and direct implications our legislation can have on the public health and on the various mechanisms our society relies upon to compensate those in need—ranging from the tort system to various social insurance programs.

In 1985 I worked diligently with my friend and colleague Senator GEORGE MITCHELL, in the hope that we could come to agreement on a limited, trial program of victim assistance in lieu of a Federal cause-of-action in tort, as some had previously suggested might be appropriate in the Superfund context. Despite our best efforts, I eventually decided to oppose the inclusion of the program in Superfund, and I supported Senator ROTH's admirable and successful effort to delete the program from S. 51 on the Senate floor. Similarly, the House of Representatives rejected a floor amendment from my good friend from Massachusetts, Mr. BARNEY FRANK, which would have gone further and established a Federal cause-of-action in tort as part of Superfund, combined with changes in the Federal rules of evidence to make it easier for plaintiffs alleging injury from hazardous waste to offer information into evidence beyond what is now admissible or relevant.

I mention the background here because it is important in understanding congressional intent with respect to the various health studies which the Congress is directing EPA and the Centers for Disease Control to produce at Superfund sites in the future. I supported these provisions because they hold the promise of more knowledge in the future about the health effects of hazardous waste sites, and the relative contribution of such sites—when compared with other factors—to the various negative effects on public health generally. These provisions of the legislation do not change the Federal rules of evidence, nor will they provide information likely to establish legal causation in cases involving individuals alleging injuries from hazardous waste site exposure. The problems of multiple causation from various chemicals acting together, or combined with life-style or genetic factors, will continue to bedevil questions of toxic compensation.

I supported the new health authorities wholeheartedly as one means toward developing information on potential health effects from waste sites. I am most hopeful that they may begin to move us toward the first steps of better knowledge of potential associations between waste site exposure and potential group health effects, and I strongly emphasize our intent that they not be used in toxic tort cases alleging individual injury where such information would not be admissible or relevant under existing rules of evidence.

I would also like to briefly discuss the new provision on settlements that was agreed to in conference. As sponsor, along with Senators DOMENICI and BENTSEN, of the Senate settlement policy amendments which were unanimously supported by the Senate last year, I was naturally disappointed that not all of the provisions of the Senate bill made it into the final conference report. But I am very heartened by the improvements which the conference made in the settlement process, and I believe that the Congress has sent a strong signal to EPA and to the Department of Justice that we expect increased numbers of settlements with potentially responsible parties.

There is no doubt that the immense transaction costs generated under Superfund—meaning lawyers' fees and the many technical and scientific studies required in litigation—have come to symbolize the worst excesses of the American legal system. Senator DOMENICI quoted Dickens' "Bleak House" in describing it last year, and he was right. We simply must work to have more societal resources spent on necessary and effective cleanup of Superfund sites, and less on convoluted litigation which merely extends any public health threat that exists from these sites.

The new settlement provisions retain a great deal of discretion for the Government in Superfund cases, while moving EPA toward adjustments in its enforcement outlook. EPA is required to establish guidelines for the development of nonbinding preliminary allocations of responsibility designed to make settlement more likely by taking the all-important first step of providing a reliable context in which settlement negotiations can begin in earnest. In particular, we expect that such procedures will get all sides "off the dime" at the many multiparty sites remaining to be cleaned up.

Further, the Congress has provided that EPA develop a numerical target representing a substantial offer, so that potentially responsible parties will have a specific goal to aim for in seeking settlement. Further, where the Government rejects an offer meeting this criterion, we have provided for signoffs in Washington by officials at the EPA and the Department of Justice. This will help the Congress to provide effective oversight over the operations of the new process, and will also help the EPA and Department of Justice by providing continuing congressional guidance.

If EPA and the Department of Justice take full advantage of their congressional defined authorities—to provide mixed funding, to speed the cases of de minimis parties who can clog the system, to prepare allocations of responsibility, and to provide meaningful releases from future liability for potentially responsible parties generally who have acted in the public interest—then we shall have a dramatically improved Superfund Program. I am hopeful that under the strong leadership of Lee Thomas, who has assured me that he will utilize these authorities to the fullest extent, an example of strong and creative enforcement will be set which will serve us well long after the strident Superfund debates of today are muted and forgotten.

I do have one final comment regarding the amendment requiring EPA to utilize available information when considering mine waste sites for inclusion on the national priority list [NPL], available information means more than information that EPA has in its files. This term is intended to refer to any relevant and reliable data or information, whether generated by EPA, State or local governments, or by the private sector. The goal is to get, use, and weigh the best site-specific and waste-specific data to accurately assess relative risk posed by each site and release under review, insofar as possible.

In closing I would add that it was a distinct pleasure to work with BOB STAFFORD, our hardworking committee chairman, and with the very fine House Members, especially Chairman JOHN DINGELL whom I have the deepest admiration for and Congressman DENNIS ECKART who is one of the brightest and sharpest House Members around. I also enjoyed working together with LLOYD BENTSEN, PETE DOMENICI, GEORGE MITCHELL, DAVE DURENBERGER, JOHN CHAFEE, PAT MOYNIHAN, FRANK LAUTENBERG, and MAX BAUCUS. All of the Senate conferees devoted many, many hours to work on the difficult Superfund issues and all made significant contributions to conference meetings. Special recognition is due my dear friend, BOB STAFFORD, for his tireless efforts to get Superfund reauthorized and I commend him for his diligence and constant good nature in this long and arduous effort.

Mr. BENTSEN. Mr. President, I would like——

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Texas.

Mr. BENTSEN. I would like to recognize the senior Senator from New Jersey, who represented not only his State but the Nation on his concerns.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. BRADLEY.

Mr. BRADLEY. Mr. President, at long last we consider the conference report on the Superfund reauthorization bill. This is truly the most important and pressing environmental issue that we face this year. The reauthorization of Superfund is crucially important to New Jersey and the Nation. Once again, time is of the essence—the program is on hold due to lack of funds. There is no longer reason, however, for the stop-gap measures. This Superfund reauthorization bill ensures a substantial program for the next 5 years and I urge my colleagues to support it solidly. We must send a strong signal to the White House that the threats of a possible veto are inappropriate and will be ultimately ineffective.

In March 1983 I offered the first Superfund reauthorization bill to be introduced in the Senate. I was concerned that the mismanagement and abuse of the Superfund Program by the previous leadership of the Environmental Protection Agency had tarnished the perception of our commitment to continuing and completing the cleanup of hazardous waste sites that threaten the health of citizens around the Nation. I wanted to demonstrate to the People that their Government had not reneged on its commitment, made to them with the passage of Superfund in 1980. My concern remains. Today we have the chance to make good on that commitment.

The bill we are considering today is a good bill. The first part contains programmatic changes to the existing Superfund law that strengthen and improve the operation of the program. The bill has strong community right-to-know provisions and cleanup standards. It sets up a program for dealing with leaking oil storage tanks. Also included are provisions that I proposed with Senators MITCHELL and LAUTENBERG that deal with the threat imposed by indoor air pollution and, in particular, radon gas.

The second "half" of the bill is the revenue title and the financing committees faced a real challenge here. The original bill was funded at $1.6 billion. The reauthorization requires at least $8.5 billion.

The original law obtained most of its revenues from a tax on petroleum and chemical feedstocks and the remainder of the revenues from the Federal taxpayer. Neither the feedstock tax nor the Federal budget provided any room for increasing Superfund revenues. Many legislators backed a new tax—a tax on wastes as they are generated. Indeed, such a waste-end tax appeared to have merit—I included one version of the waste-end tax in the bill I introduced. The principal problem was that the waste-end tax was not capable of producing anywhere near the required revenues.

Last year, I offered the first broad-based tax to be introduced in the Congress. I proposed to tax all corporations making over $50 million per year at a rate of 0.08 percent (.0008) of their corporate net receipts. Conventional wisdom had it that it was politically risky to propose a new tax on businesses, but it seemed to me that no other alternative existed if Superfund were to be reauthorized at a level of funding sufficient to do the job over the next 5 years. As it turned out, the Superfund conferees agreed with me and not the conventional wisdom.

Mr. President, I would like to thank all members of both committees, the chairman, and the members of the conference. I would also like to offer special recognition to my colleague, Senator LAUTENBERG, for his effective hard work on the Environment and Public Works Committee and in conference.

We made a promise 6 years ago to clean up the thousands of hazardous waste sites that blight our land. The creation of the Superfund in 1980 told

the American people that the Government recognized a mammoth problem, a continuing threat to public health, and that it could take the necessary steps to address that problem.

For a while the American people were wondering what happened to that promise. They see only slow progress cleaning up the sites in their communities. They saw the first several years of the Superfund's existence wasted by an EPA willing to use the Superfund for political favors instead of for cleaning up hazardous waste. They saw the program limp along this past year on a series of temporary extensions, as we were unable to reconcile our differences of opinion. Can we blame them for their skepticism?

We must reaffirm that promise we made back in 1980. We have the chance to make good on it now. We cannot wait any longer.

Superfund taxing authority expired over a year ago and forced the EPA Administrator to halt all but emergency work on Superfund sites. This program is so vital to public health and confidence in Government cannot be allowed any longer to lapse.

□ 1730

Today, with this reauthorization, it will not lapse. We will keep our word to the people of New Jersey and the Nation. We will clean up toxic waste sites.

The PRESIDING OFFICER. The Senate is not in order. Senators are asked to take their seats. Senators wishing to engage in conversation are asked to retire to the cloakrooms on both sides of the aisle. Who yields time?

Mr. STAFFORD. Mr. President, I yield 2 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I want to thank the distinguished chairman for yielding me 2 minutes.

Mr. President, I would like to clear up some uncertainty concerning the Environmental Protection Agency's authority to obligate funds from the Superfund trust fund and other trust funds created by this legislation. Current law and this conference agreement on H.R. 2005 are vague on this point. To date, EPA only has expended funds from Superfund to the extent those expenditures have been made available through appropriations acts. I would like to ask the distinguished chairman of the Senate Environment and Public Works Committee a question. Is the spending authorized by current law and in the conference report on H.R. 2005 subject to annual appropriations action?

Mr. STAFFORD. Yes. Our intention is that the expenditures authorized by the conference report on H.R. 2005 be subject to annual appropriations action.

Mr. DOMENICI. I thank my friend.

Mr. President, I had the privilege of serving on this committee for 14 years. On the issue of Superfund I served for almost as long, and on the conference for a period of time it seemed almost as long. But 9 months ago I did not think we would be here. It is because this is a major American issue of high, high significance and many Senators were dedicated to resolving it and many House Members were. We were able to mold two very diverse bills, as complicated as any piece of legislation that will ever pass the U.S. Senate, into something that a number of Senators on both sides of the aisle and a number of House Members from both sides with different ideologies have put their signatures to.

I believe we will have problems with Superfund, but clearly we will have far worse problems if we do not get on with adopting this law. Hopefully the President will sign it and get our EPA Director to start the difficult, onerous, and tedious job of cleaning up about 50 years of very, very difficult environmental problems for our country. I hope in the years to come we will find success from this bill in one of the most serious environmental problems in our country. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. How much time remains?

The PRESIDING OFFICER. The Senator has 3 minutes and 12 seconds remaining.

Mr. CHAFEE. Mr. President, the drama that may become known as the perils of Superfund is about to enter the final scene. The long awaited conference report has been produced.

The days, weeks, and months—the years of work that have gone into this effort are almost over. As one of the conferees on this bill, I hope our work is done.

For too long, too many people have been playing politics with the health and welfare of our constituents. Superfund has become a political football. Lobbyists on both sides of the issue, the administration, and Members of Congress have engaged in a game of brinkmanship. Notwithstanding the considerable progress that has been made to date, this abhorrent game continues.

The final scene, the climax of this drama will come when the bill reaches the White House. Will the President sign this bill? I don't know. But I do know that he should sign it and will be making a serious mistake if he doesn't sign it.

The importance of getting the money flowing back into the field—back to where it can be put to work actually cleaning up the thousands of toxic waste sites that are riddled throughout the country—cannot be overstated. Short-term extensions of funding are not the answer. They are merely Band-Aids and Band-Aids will not help a program that is dying. Putting off resolution of our differences will not make our task any easier nor will it help those who live near these toxic dumps and need action today. We need a healthy, long-term infusion of money to get these sites cleaned up as soon as possible.

The officials representing this administration have consistently threatened a veto if we adopted a funding package they don't like. Well, Mr. President, I don't expect them to like this one. Indeed, there are elements of it that are seriously troubling to me. The differential tax rate on imported versus domestic oil, for example. My willingness to accept this portion of the bill is conditioned on an understanding that this is not a precedent. Accepting a differential of a few pennies per barrel is a far cry from the oil import fees that some Members of this body have advocated for other purposes. I will continue to oppose such fees.

The funding proposal before us today derives significant revenues from the petrochemical industry. This is consistent with the principle of Superfund: the principle that the polluter pays. Inclusion of a broad-based corporate tax and revenues from the General Treasury is not inconsistent with the polluter pays principle and reflects the fact that the problems of toxic pollution are societal problems. If this program works as it is supposed to, all polluters that can be identified will be forced to pay for the cleanup of sites containing their wastes. The enforcement program is the place to make sure that the polluter pays.

Mr. President, under the leadership of the chairman of the Committee on Environment and Public Works, Mr. STAFFORD, the conferees on the nontax portion of Superfund took two bills—bills that approached 1,000 pages when put side by side—and came to agreement on a substitute bill that represents the best features of both original bills.

Our chairman worked long and hard for this legislation. Despite innumerable obstacles, he never gave up hope or slackened in his tireless efforts to achieve the goal of a new, improved Superfund. For months and months, the conference meetings went on and on. At each and every meeting—small private sessions or large public meetings—he was there. Anyone who cares about this program is indebted to the senior Senator from Vermont, a gentleman in the truest sense of the word.

Approval of this legislation today will put into place a new, improved Superfund program. Assuming enactment of this bill, we will have a new

law that corrects many of the problems and weaknesses that have been discovered since Superfund was first created in 1980. For example, the conferees have agreed to add to the law and this legislation includes the following key provisions:

Funding: The program is extended for 5 years at a level of $8.5 billion—an increase of more than fivefold over the old law which provided only $1.6 billion for the first 5 years.

Underground tanks: A new program to clean up leaking underground storage tanks is established, funded at $500 million over 5 years. This program is designed to address problems such as those that plagued Canob Park in Rhode Island.

Community right to know: A new program requiring companies using more than 25,000 pounds of toxic chemicals to disclose and develop emergency plans for 400 such toxic chemicals is added.

Schedules: The EPA is required by law to begin at least 375 cleanups within 5 years.

Health: The Federal Government is required to conduct health studies at all Superfund sites and to conduct laboratory tests of at least 275 of the most dangerous chemicals found at sites.

Citizen suits: Citizens are given an express right to sue to force the Federal Government to perform mandatory duties imposed under the law.

Victims rights: Language is included which gives victims of toxic chemicals relief from restrictive State statute of limitation laws, many of which require an individual to initiate a lawsuit within a few years of exposure to a toxic substance even though the effects of exposure may not show up for decades. Under the new law, the statute of limitations will run from the time an individual discovers there is a cause of action for suit, rather than from the time of actual exposure.

Cleanup standards: Rigorous new environmental cleanup standards which will require the Environmental Protection Agency to comply with other Federal environmental standards in cleaning up toxic waste sites and which will, in many cases, require that EPA adhere to tougher State standards where a State has more stringent regulations are added by the bill. This deals with the issue of how clean is clean? In the context of this provision, EPA will be required to remove contaminated dirt at the Picillo dump site in Coventry. This provision was added at my insistence after the State of Rhode Island was forced by EPA to go to court last December in an effect to get EPA to remove the contaminated dirt.

Siting of hazardous waste facilities: A new provision that I sponsored will require each State to devise a plan within 3 years for the disposal or treatment of the toxic wastes generated within the State. The objective is to force States to provide safe and adequate facilities for toxic and hazardous waste. States will be allowed to pool their resources to provide joint disposal or treatment facilities. States failing to comply will lose the right to all but emergency cleanup funds from the Superfund.

These are tough, realistic provisions that make major improvements to the Superfund law. They are significant changes that will improve the Government's ability to respond to problems presented by toxics that are released or threatened to be released into the environment and will force the Government to upgrade the quality and permanent nature of its responses. This legislation will also provide citizens living near these sites with the tools needed to assure that these sites are being properly and adequately cleaned up. For example, EPA will no longer be able to argue that they can ignore Rhode Island's more stringent clean up standards at the Picillo site in Coventry. New cleanup standards designed to answer the question, "How clean is clean?" will force EPA to do more than simply install a fence around the site to keep people away and a cap over the site to keep rain off the site. Over the past 5 years, this capping has become EPA's standard method of cleanup, it has become the rule. It will now be the exception.

Important legislative history explaining the conference agreement and the statutory language of this legislation is contained in a statement of managers. To supplement that statement of managers, several key points need to be made.

SITING OF HAZARDOUS WASTE FACILITIES

A critical step in the implementation of a rational, safe hazardous waste program is the creation of new facilities employing the most advanced waste management technologies. But to establish newer, improved facilities, sites on which these facilities can operate must be found and made available. Although most States have enacted or have pending some form of siting legislation, few, if any, have developed policies and siting programs that will assure continued facility capacity in the long term. Recognizing that, as a general rule, States are not moving aggressively to avoid the creation of future Superfund sites, an amendment on siting of hazardous waste facilities was adopted by the committee.

This section of the bill provides that, effective 3 years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to RCRA-approved facilities for the treatment or disposal of all of that State's hazardous waste (other than those wastes that will be recycled) for the next 20 years. Merely having a plan on paper is insufficient. There must be reason to believe that the assurances are real, that the plan will work.

Such assurances must be made to the President. The President is expected to delegate the Federal responsibilities under this amendment to the Administrator of the Environmental Protection Agency.

The availability of funds for "removal actions" is not affected. The short-term, emergency cleanup of, for example, a road side spill or a stack of drums that are about to explode could proceed. What will be withheld are funds for "remedial actions," the long-term, permanent cleanup of sites on the national priority list.

To avoid a cutoff of funds, each State is required to develop State policies and siting programs that will make the best use of existing facilities in the short term and will assure continued facility capacity in the long term. The details of the siting process will differ depending on the circumstances of each State.

A site in every State is not required. In some cases, multi-State efforts may be appropriate. Use of binding agreements through interstate compacts guaranteeing access to a facility is only one example of how a State may provide the requisite assurances. State or local ownership and operation of facilities or contracts with private facilities may also suffice.

The rational for this requirement is straightforward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. Pressures from local citizens place the political system in an extremely vulnerable position. Local officials have to respond to the fears of local citizens. The broader social need for safe hazardous waste management facilities often has not been strongly represented in the siting process. A common result has been that facilities have not been sited, and there has been no significant increase in hazardous waste capacity over the past several years.

In 1976, the Resource Conservation and Recovery Act [RCRA] was passed, mandating the construction of needed hazardous waste facilities and placing the responsibility for siting the facilities with the States.

Unfortunately, when RCRA was first passed, Congress failed to anticipate the intensity of public opposition to new and expanded waste management facilities. While everyone wants hazardous waste managed safely, hardly anyone wishes it managed near them. This is the NIMBY syndrome [not in my backyard]. Yet if the RCRA and Superfund programs are to work—if public health and the envi-

ronment are to be protected—the necessary sites must be made available.

This is not a new issue. In 1976, RCRA directed the States to develop plans for the management of their wastes, including hazardous wastes. In 1980, EPA, the National Governors' Association and numerous other groups and institutions produced reports, handbooks, and resolutions on the siting issue.

Section 104 of Superfund already requires that each State assure the availability of a RCRA approved facility for management of materials removed from a site before remedial action can begin. Unfortunately, that condition has been largely ignored by EPA and the States.

Most States have enacted, or have pending some form of siting legislation. Some have chosen to establish siting approval boards; some have chosen to authorize preemption over local zoning laws; some have authorized State acquisition, operation and maintenance of sites through existing institutions or through quasi-public corporations. Merely having enacted such legislation, however, will not satisfy the requirement of this section. Each State must provide assurances that their legislative program can work and will be used.

There are a number of obstacles to siting new hazardous waste management facilities. These include:

First, lack of cooperation among interested parties who distrust one another's motives and doubt the willingness of the other parties to make any substantial concessions to alleviate their concerns. Use of compensation, mitigation or other measures such as land value guarantees or the posting of bonds to finance continued water supply testing and the like might help alleviate some of these problems.

Second, lack of reliable, objective information or criteria for evaluating proposals and sites and citizens' distrust of technical information provided by government or industry.

Third, insufficient public perception of the need for new treatment facilities.

Finally, the most distressing problem, leadership by Government officials at all levels is sorely lacking.

A successful siting program should recognize three key principles:

First, a complete technical analysis of all proposed sites is essential prior to the selection of a particular site. This analysis should take into account both environmental effects (for example, from the hydrology, geology, ecology, and so forth) as well as factors based on the proximity and relation of the facility to residences and institutions.

Second, site selection must be accompanied by full public participation. This involvement should start at the beginning of facility planning, and should continue through the site selection and approval process. It should be accompanied by a broad-scale public education effort, since the public needs to become a knowledgable partner in site selection decisions.

The opposition of the public stems in part from the fact that the procedures for citizen involvement have been neither well thought out nor carefully applied. Further, the standard mechanism for involving the public—the public hearing—routinely becomes a crowded, highly emotional exercise in mob psychology. In addition, the media often highlight the fears of the opponents, making rational decisions even more difficult to make.

Third, the process of site selection should find a way to transcend blanket local vetoes. No community should be able to remove itself from consideration on political grounds alone. Everyone must take responsibility for assuring that adequate sites are available.

CLEANUP STANDARDS

Cost effectiveness requirement: The legislation retains the "cost effectiveness" requirement of current law. An analysis of cost effectiveness begins only after a remedial action has been selected in compliance with the health, permanent treatment and other standards, requirements, criteria or limitations imposed by this new law. As under current law, the cost effectiveness requirement does not apply to the selection of a remedial action but rather applies to choosing the least costly alternative method of effectively implementing a remedial action once one has been selected. For example, the selection of a remedial action might involve a choice between various onsite containment alternatives and a permanent treatment technology Permanent treatment technologies must be chosen whenever they are feasible and achievable. That is a separate requirement that must be met before the cost effectiveness test is applied. Otherwise, remedies such as a cap over the site and a slurry wall to prevent further leakage would always be selected as a cheaper alternative. Such a result, and a decisionmaking process that produces such a result, would be contrary to the clear intent of Congress and illegal.

Once the remedy has been selected, the cost-effectiveness requirement is applied to its implementation. Implementation of a remedy includes choosing the least costly methods which, and contractors who, will effectively carry out the chosen remedy.

Criteria to be considered in determining cost-effectiveness includes—in addition to the total cost of implementing the remedy projected by each potential contractor—the past record of performance of the persons or firms competing for the project; the relative merits of the various proposals submitted by such persons or firms; and, where permanent treatment technologies are not utilized, the degree to which expenditure of larger sums today will enhance the durability of the remedy and reduce the need to spend additional sums in the future.

Compliance with the National Contingency Plan: The legislation states that remedial actions selected by the President shall, to the extent practicable, comply with the National Contingency Plan [NCP]. This language is intended to assure that alleged failures to comply with the NCP shall not be available as a defense to any liability in an enforcement proceeding brought under section 106 or 107. The language is not intended to provide any independent authority to EPA or other agencies to fail to apply, to overlook, ignore or waive any standard, requirement, criteria or limitation established under the law.

Permanent treatment: The legislation establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discreet units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

The extent to which a particular technology or solution is feasible or practicable is not a function of cost. A determination that a particular solution is not practicable because it is too expensive would be unlawful. Tough choices on the basis of cost must be made under the fund balancing test that is set forth elsewhere in this section of the bill, not under the guise of being not practicable.

"Permanent treatment or alternative technologies" mean treatment methods that permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants. Significant reduction is the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them (for example incineration) or neutralizing them (for example application of chemical or bioengineered neutralization agents). Mere reductions in volume of toxic and mobile substances by, for example, dewatering the substances, would not, by itself, constitute effective use of permanent treatment or alternative technologies. Implementation of the technologies required by this amendment should, on a permanent basis,

minimize risk to human health and the environment.

"Permanent solution" means the application of permanent treatment or alternative technologies to hazardous substances, pollutants and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a risk to human health or the environment on a permanent basis.

It is a major goal of the Superfund Amendments and Reauthorization Act of 1986 to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions whenever they are feasible and achievable. The implementation of such solutions to sites cleaned up under the program is the only way to assure the successful completion of the cleanup effort.

To carry out the goal of implementing permanent technologies and permanent solutions wherever they are feasible and achievable, the legislation requires that whenever a remedial action is selected, such technologies and solutions must be assessed. Such assessments shall take into account—at a minimum—the following factors:

1. The long-term uncertainties associated with land disposal. Such uncertainties include the probability that any land disposal facility, even one employing the best available technology, will eventually leak; the institutional uncertainties associated with assuring that cleanup resources will be available when leakage occurs; and the uncertainties inherent in predicting the size and location of future populations.

2. The goals, objectives, and requirements of the Solid Waste Disposal Act. For example, that act provides that the land disposal of hazardous wastes is the least favored method of regulated waste management.

3. The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents. It is these characteristics which necessitate the use of permanent treatment technologies at Superfund sites rather than containment. Since all containment systems are expected to ultimately fail, it is important to assess the hazard timeframe of substances at a site when selecting a remedial action and consider the fact that some substances are transformed to toxic byproducts and become more toxic over time.

4. Short- and long-term potential for adverse human health effects. The assessment should consider the hazard posed by each available remedial action to people who are or may be exposed to hazardous substances, pollutants and contaminants as a result of the remedy chosen. For example, the less permanent the remedy, the greater the potential for adverse health effects as a result of continued or renewed releases over the long-term.

5. Long-term maintenance costs. Permanent solutions may cost more initially, but will involve little, if any, long-term maintenance costs such as those associated with less than permanent solutions.

6. The potential for future remedial action costs if the alternative remedial action in question were to fail. Once again, if the initial remedial action that is implemented is a permanent solution, the costs of repairing failures associated with nonpermanent, containment remedies will be avoided.

7. The potential threat to human health and the environment associated with excavation, transportation and redisposal, or containment. This factor is really a specific subset of the overall health effects consideration incorporated in the assessment and is designed to assure that the selection of remedy take into account possible risks associated with expanding the populations exposed to hazardous substances, pollutants or contaminants when such substances are moved offsite as well as the risks to populations that result from nonpermanent, onsite solutions such as containment. The legislation does not require a quantitative, comparative risk assessment, but rather contemplates an objective consideration of all of the factors affecting or potentially affecting human health.

Whenever the President selects a remedial action that does not implement a permanent solution, or that does not implement a permanent or alternative treatment technology, he must explain his reasons for rejecting such a solution, or for failing to implement such technologies. Such explanation shall, at a minimum, include a discussion of the permanent solutions examined and rejected, and an analysis supporting the proposed solution. The explanation shall be subject to public comment as part of the remedial investigation and feasibility study. The public must know of the alternatives being considered before a decision is made. The Government is not allowed to operate in the dark. The issues of remedy selection and use of permanent solutions are central to this legislation and cannot be ignored.

To encourage the development and implementation of innovative permanent treatment technologies, the legislation permits the President to select such technologies whether or not they have been achieved in practice at other similar sites or facilities. A technology still at the experimental phase could, under this provision, be deemed cost-effective when compared with other permanent treatment technologies, as this is a technology-forcing provision. The legislation further permits the President to take into consideration whether residents of the community around a site endorse, in general, implementation of an experimental technology.

Periodic review: The legislation states that whenever the remedial action at a site involves an onsite remedy that does not result in a permanent solution so that hazardous substances, pollutants or contaminants are left at the site, there is a mandatory duty that the President shall conduct a periodic review of the continued effectiveness of such remedies and report the results to Congress.

In determining what actions to take as a result of a periodic review, the President shall consider whether permanent or alternative treatment technologies have been developed since the remedial action was first selected and shall implement such technologies wherever possible.

The periodic review provision is intended to assure that Superfund cleanups keep pace with developing technologies and that remedial actions are upgraded to take advantage of such developing technologies. It is a technology-forcing provision. The ultimate goal of the Superfund program must be to implement permanent solutions at all National Priorities List sites. The best way to accomplish this goal is to require periodic review and to assure that sites are not removed from the ambit of the program until such solutions have been implemented.

General Health Standard: The legislation states that any remedial action selected or required under sections 104 or 106 must—at a minimum—assure protection of human health and the environment. The general standard of "protection of human health and the environment" is modeled after the standard that applies under the Solid Waste Disposal Act. The legislation requires that this standard be the minimum standard met by any Superfund cleanup. Compliance with standards promulgated under the authority of other laws will not necessarily assure compliance with this general standard.

Identification of Specific Standards: The list of Federal and state laws included in the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria or limitations that must be applied to Superfund remedial actions. If the President or the courts determine that other, unlisted laws contain standards which are legally applicable, or relevant and appropriate, such standards shall apply to such remedial actions.

Legal applicability: The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides that legally applicable requirements established under any other Federal or State law are pre-

empted only where explicitly stated. For example, all requirements contained in substitle C of the Resource Conservation and Recovery Act (RCRA) currently apply as a legal matter to onsite remedial actions conducted under CERCLA, when for example, the facility is a facility already covered by RCRA or hazardous wastes are exhumed and stored, treated or redeposited at the site.

This legislation reiterates the intent of current law that, except as explicitly provided, the specific standards, requirements, criteria or limitations which are already legally applicable to Superfund sites and cleanups must be applied to remedial actions selected or required under sections 104 or 106 after the date of enactment. As such, RCRA facilities must meet RCRA standards, irrespective of other provisions in this law, even if the site is listed on the national priorities list.

Relevance and appropriateness: The legislation states that standards, requirements, criteria or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate."

The importance of the principle that the purpose for which a standard was developed should always be considered in determining its relevance to Superfund cleanups cannot be overemphasized. The purpose of the standards developed under the Safe Drinking Water Act, for example, are to protect people from drinking contaminated water. The act applies these protections at the tap. In order to effectively utilize these standards in selecting a remedial action at a Superfund site, they cannot be applied by the use of extrapolations that project the condition of water at some hypothetical tap, but must be applied wherever the contaminated water is found.

A central goal of the cleanup standards section of the legislation is to prohibit the "writing off" of potentially useful ground water supplies that have been contaminated by Superfund sites. Such natural resources are both finite and irreplaceable. The purpose of the Superfund Program is to reclaim such contaminated sources whereever possible.

Finally, in determining the relevance and appropriateness of standards, requirements, criteria or limitations, EPA should consider not only pathways of human exposure but the impact that contamination from a Superfund site has on the environment. Environmental contamination must be eliminated both to protect ecosystems and to prevent the public health threats that result from indirect exposure to hazardous substances, pollutants or contaminants. Perhaps the most obvious example of this latter phenomenon is contamination, by releases from Superfund sites, of habitat that is even remotely connected to the human food chain.

Water quality criteria: Water quality criteria typically contain three different exposure levels—or numbers—depending on whether the water at issue will be: First, consumed by people; second consumed by people and used to support aquatic life; or third, used only to support aquatic life.

In determining how to apply such criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially useable as a source of drinking water is contaminated by a water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption.

The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate. This provision affects the selection of the appropriate exposure level and does no mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

ALTERNATE CONCENTRATION LIMITS

This legislation sanctions, in certain circumstances, the use of a regulatory process for setting alternate concentration limits [ACL's]. As developed by EPA for use in the regulatory program under the Resource Conservation and Recovery Act [RCRA], the ACL process affords the owner or operator of a RCRA facility the opportunity to demonstrate that, in determining the level to which contaminated ground water must be corrected, some alternate level of contamination or cleanup, other than background, does not threaten human health and the environment. While such regulatory process remains in effect, this legislation would provide the same opportunity during the course of Superfund cleanups to potentially responsible parties or EPA under specified conditions. In theory, the ACL process may be used to show that a level of cleanup that is more stringent than either an existing standard or background is necessary to protect human health and the environment.

The first condition inserting the use of the ACL process in Superfund is that it should be used to relax a "background" standard of cleanup only when no other previously established standard or level of control; for example, water quality criteria or MCL, applies to the hazardous substance, pollutant or contaminant at issue. If any other standard or level of control is legally applicable, or relevent and appropriate, establishment of a separate, less stringent ACL is both unnecessary and improper.

A second condition limiting the use of ACL's is that they must be based on a point of human exposure that is located at the boundary of the Superfund facility, and no further. The facility boundaries are in turn to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site.

"Facility" is defined under CERCLA as the place where hazardous substances, pollutants or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination caused by a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility", where hazardous substances, pollutants or contaminants have come to be located. The remedial action called for in the RI/FS will then clean up the entire facility, and prevent future releases from such facility. Neutral or buffer zones which have not yet been contaminated therefore cannot constitute a "facility" at the completion of the RI/FS.

For the purposes of Superfund only, there is a narrow exception to the rule that the point of assumed human exposure used to establish an ACL cannot exceed the facility boundary. As discussed more fully below, the conferees recognized the unique circumstances surrounding Superfund cleanups and agreed to give Superfund special treatment that is not necessarily appropriate for RCRA corrective actions. The endorsement of ACL's to set cleanup levels less stringent than background is only for Superfund. The exception to the facility boundary exposure rule is similarly limited to Superfund. It is important to note that three conditions must be met before the exception from the "facility boundary rule" may be invoked.

First. The first is that the contaminated ground water at the site is known to feed into a source of surface water—that is, a lake or stream.

Second. The second is that, at the specific point where such ground water first enters the surface water, there is, or will be, no statistically significant increase in hazardous constituents, nor any accumulation of such constituents downstream. Such accumulation could occur downstream in either the water sediment or biota, due to bioaccumulation. This second condition can only be satisfied if there is sufficient attenuation of the contamination to provide for adequate di-

lution of the contamination in the ground water so that it cannot be measured at the first point where the ground water feeds into surface water and cannot be measured downstream from such point of entry.

Third. The third condition is that a legally enforceable measure must be in place to preclude human exposure to contamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place and cannot be reversed for as long as the waste remains hazardous.

As suggested earlier, the conditional Congressional endorsement of a regulatory ACL process to establish less stringent ground water cleanup levels is limited to Superfund. Superfund cleanups are a special case. Our action in this act must in no way be construed as an endorsement of the process in the context of RCRA. Indeed, several members of the conference committee clearly stated the fact that the ACL process in RCRA is of questionable legality and, in their view, is not legal.

ACL's are not in the RCRA statute. They are a creation of EPA. The 1984 congressional reauthorization and amendments to RCRA cannot be viewed or construed as an endorsement of the current RCRA ACL process. Even though the process was outlined in very general terms in regulations in effect at that time, the process had not been used. Congress was not aware of the details of the process because it had never been used and the guidance documents setting forth the details of how it is to be used in RCRA were not published at that time. In fact, they are still not in final form.

The legality of the current RCRA ACL process to set less stringent standards is in question, in part, because the mathematical models used by EPA to project exposure levels and, more importantly, the assumptions that go into use of those models are so unreliable that decisions based on them are likely to be arbitrary and capricious.

By conditionally sanctioning an ACL process for Superfund that assumes a point of exposure no further than the facility boundary, we have expressly rejected EPA's use, to set less stringent standards, under RCRA and Superfund, of hypothetical exposure points beyond the facility boundary.

FEDERAL FACILITIES

This provision is intended to make clear that all guidelines, rules, regulations and criteria promulgated pursuant to CERCLA must be complied with by all federally owned facilities unless specifically exempted by this act or in accordance with the procedure of this act. It is specifically intended that Federal agencies be required to comply with all procedural and substantive provisions of the national contingency plan [NCP]. This includes the mandatory development of a remedial investigation/feasibility study to assure the adequate consideration of all relevant factors in choosing and implementing a remedy in accordance with the NCP.

This new provision on Federal facilities applies to all federally owned facilities at which hazardous waste is located, including those Federal facilities for which a response action, remedial action plan, other type of cleanup plan, implementation of a partial remedy or other activity affecting the site is currently under development. To the extent that the specific procedural and substantive requirements of the national contingency plan and this section have not been followed, a Federal entity must modify such plan or activity to comply. The only exception to this requirement is the limited grandfather for certain Department of Energy facilities.

Section 120 of the new amendments is intended to complement the substantial new cleanup authorities provided to EPA and authorized States in the Hazardous and Solid Waste Amendment of 1984 [HSWA]. In HSWA, for example, we required that an owner/operator of a hazardous waste facility requiring an operating or postclosure permit must clean up releases from any solid waste managment unit within the property boundary of the facility as a condition of receiving the permit. This provision, codified as section 3004(u) of RCRA, applies to public and private facilities, including facilities owned and/or operated by Federal agencies. Similar cleanup authority applicable during interim status was codified as section 3008(h) of RCRA, and is also applicable to public and private facilities.

Some Federal facilities may be subject to section 120 and the corrective action provisions of HSWA because of RCRA related activity conducted at the facility. Section 120(i) reaffirms our intent that the HSWA corrective action provisions apply to Federal facilities in the same manner and to the same extent as private parties. In addition to the HSWA provisions, section 120 of the new amendments establish additional requirements for Federal facilities intended to quicken the pace of cleanup activities at these sites. These requirements include the establishment of minimum timeframes for delineated response activities. These timeframes may be shortened by EPA or an authorized State in the context of a permit compliance schedule or administrative order, pursuant to section 3004(u) or section 3008(h) of RCRA. EPA or the State may decide that such action is necessary to protect human health and the environment. Accordingly, where RCRA authorities are applicable, the listing of a site on the national priorities list or other response activities conducted pursuant to the new amendments does not and should not impair in any way the implementation of the corrective action authorities of RCRA. Similarly, the exemption from a requirement to obtain a permit for onsite response activity under section 121 of the new amendments shall not be used by RCRA facilities or EPA to circumvent the requirement of RCRA regarding permits for operation or closure of treatment, storage or disposal facilities and compliance with section 3004(u) of RCRA.

RECYCLED OIL

Section 114 of the final bill, relating to liability that attaches to the handling of recycled oil, was designed to deal with a largely speculative problem. A number of interests were concerned that, if EPA went through with a regulatory proposal to list recycled oil as a hazardous waste under RCRA, the problems of stigma and other perception problems that would result from the automatic trigger of Superfund liability that follows such a listing would effectively destory the oil recycling industry.

For the reasons set forth in the conference report, this amendment was adopted. However, it now appears that the Agency is about to abandon the RCRA approach and will choose to reply, instead, on Toxic Substances Control Act authorities. It should be noted that, by adopting this Superfund amendment, the Congress has neither endorsed nor encouraged such a regulatory approach. Moreover, if EPA fails to promulgate management standards for recycled oil under section 3014 of RCRA, this amendment to Superfund will not become effective. The failure of EPA to list such oil as a hazardous waste under RCRA will not solve the problem because Superfund liability may attach to the handling of oil that is a hazardous substance.

Nothing in this section shall affect or impair the authority of the President to take a response action pursuant to sections 104 or 106 of CERCLA with respect to any release or threatened release of used oil or recycled oil.

With respect to the amendment in this bill, it is recognized that some Government agencies have established collection facilities to accept delivery of small quantities of used oil from individuals. Such facilities that are established solely for this purpose will qualify as a "service station" under this agreement. However, these facilities may not be used to extend the amendment's special treatment to other Government facilities.

Finally, the conference report refers to the relationship between the corrective action requirements of RCRA subtities I and those of subtitle C for un-

derground storage tanks. Such tanks containing used oil which has not been mixed with other hazardous substances would generally fall within the meaning of petroleum tanks under the subtitle I response program. In responding to releases from such tanks, the EPA should use the authorities of subtitle I rather than authorities under Superfund or other corrective action authorities under subtitle C of RCRA. This formulation of the relationship between the various authorities is based on the current status of oil, used or otherwise, as a substance that is not listed as a hazardous waste. If, however, oil becomes subject to other rules of RCRA subtitle C as a hazardous waste, all of the provisions of subtitle C, including corrective action, would apply. Underground tanks containing such oil would have to meet the same requirements of subtitle C as other underground tanks containing hazardous waste, notwithstanding the separate regime under subtitle I.

Mr. THURMOND. The preenforcement review provision adopted by the conference is one of the most significant provisions developed during the reauthorization process. I would like to present my interpretation to the chairman so that he can confirm whether my interpretation conforms with the intention of the conferees.

It is my understanding that the provision confirms and builds upon existing case law. In particular, the timing of review section ensures that Government and private cleanup resources will be directed toward mitigation, not litigation. The section is designed to preclude piecemeal review and excessive delay of cleanup. Interested parties will be able to participate early in a more regularized administrative process instead of making premature challenges in court to remedy selection or liability.

By its terms, this section establishes the circumstances in which courts will have jurisdiction to review response actions. Thus, both citizen suits and the opportunities for review noted in the cleanup standards section must be utilized in a manner consistent with the timing of review provisions.

The timing of review section is intended to be comprehensive. It covers all lawsuits, under any authority, concerning the response actions that are performed by EPA and other Federal agencies, by States pursuant to a cooperative agreement, and by private parties pursuant to an agreement with the Federal Government. The section also covers all issues that could be construed as a challenge to the response, and limits those challenges to the opportunities specifically set forth in the section.

Thus, for example, while courts may be required to enforce an access order under section 104(e), there is no jurisdiction at that time to review any response action. In actions to compel access, the court may only review whether the Agency's conclusion that there is a release or threatened release of hazardous substances is arbitrary or capricious. The court may not review the response action to be performed. Similarly, there is no jurisdiction to review a response action through a citizen suit except as provided in the timing of review section. Citizens, including potentially responsible parties, cannot seek review of the response action or their potential liability for a response action—other than in an action for contribution—unless the suit falls within one of the categories provided in this section. The one opportunity for review that is not set forth in the timing of review provision is the express opportunity provided in section 121(f), (2) and (3), the cleanup standards provisions relating to remedial actions secured under section 106 and remedial actions at facilities owned or operated by a Federal agency. Under that section, a State may bring an action for the sole purpose of determining whether the finding of the President waiving a particular State standard is supported by substantial evidence. This opportunity does not exist for a fund-financed remedial action, since performance of the remedial action depends on the State's assurance of a share of the costs of cleanup; therefore, the State already has control over the application of State standards to fund financed remedial actions, and no additional process is needed.

The reference in the introductory language of the timing of review section to the general jurisdictional provision 28 U.S.C. 1332 is designed with the sole purpose of ensuring that actions in State court under State law can continue to be brought in Federal court if diversity jurisdiction exists. Actions within the scope of diversity jurisdiction may include, for example, a private nuisance suit against a person in another State who is not otherwise acting pursuant to an agreement with the Federal or State government. Thus, this reference to 28 U.S.C. 1332 does not create any additional rights or opportunities to obtain review of a Superfund response action.

Similarly, the reference to "Federal court" is simply to recognize existing section 113(b) of CERCLA, which provides that except for review of regulations, Federal district courts have exclusive jurisdiction over all controversies under CERCLA. Therefore, any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court, and only under the circumstances provided in this section. Does the foregoing explanation adequately describe the intention of the conference committee in adopting this language?

Mr. SIMPSON. Yes, my friend, the gentleman from South Carolina has given me a very good explanation of one of the more complex provisions in this conference report. The explanation is certainly in conformity with the intention of the conferees on this bill. I recall that well.

Mr. THURMOND. I would also like to ask the chairman whether my interpretation of the phrase "taken or secured" in this same timing of review provision is the correct reading. It is my understanding that under the provision, no person may bring any lawsuit in Federal court regarding a federally approved removal or remedial action except when the removal action has been completed or when the remedial action has been taken or secured. "Taken or secured" means that all of the activities set forth in the record of decision which includes the challenged action have been completed. Moreover, there is to be no review of a removal action when there is to be a remedial action at the site. Thus, for example, review of the adequacy of a remedial investigation and feasibility study, which is a removal action, would not occur until the remedial action itself had been taken.

The section is designed to preclude lawsuits by any person concerning particular segments of the response action, as delineated by the records of decision, until those segments of the response have been constructed and given the chance to operate and demonstrate their effectiveness in meeting the requirements of the act. Completion of all of the work set out in a particular record of decision marks the first opportunity at which review of that portion of the response action can occur.

Mr. SIMPSON. The gentleman from South Carolina is quite correct. His interpretation of the meaning of the phrase "taken or secured" in context of the timing of review section is exactly the interpretation the conferees intended.

Mr. STAFFORD. Mr. President, we are going to have a rollcall vote, immediately following the rollcall vote concluding the handling of the continuing resolution, on the Superfund conference report. I hope that the Senate will unanimously adopt the conference report.

I heard what one of my colleagues said. I hope the President will sign this conference report when it comes to the White House. I think it is very important for the welfare of the American people that this program, designed to clean up hazardous waste sites, moves forward in this country, meeting the enormous task of cleaning up the hazardous waste sites that exist around the country.

Recently I visited one, and I can tell you that the people who are afflicted with the presence of one of these sites are truly desperate for help. We need to help them.

As the assistant majority leader said, the administration would greatly mistake the mood of this Senate and this Congress if it considered vetoing this bill. I think maybe even more important, it would greatly misconstrue the feelings of the American people who want this legislation, if the President is asked by some of his advisers to veto this bill.

So I very strongly hope that the bill will be signed by the President and become the law of this land. Again, I hope that when we reach the rollcall, we will unanimously, as Senators endorse this conference report.

Mr. BAUCUS. Mr. President, enactment of the Superfund Amendments and Reauthorization Act of 1986 will ensure that America's toxic chemical and hazardous waste cleanup program is finally on track. It has been a long struggle involving both this Congress and the previous Congress—a struggle actually predating the original enactment of Superfund. Today's action hopefully brings that struggle to a close in a way that will allow the American public to know that their Government is willing to protect the environment and, most importantly, force polluters to do the same. Our action today tells the American public that their Government will aggressively clean up and restore damages caused by our past hazardous waste disposal practices.

The 5-year $8.5 billion reauthorization, combined with the bill's other provisions, will ensure an adequate commitment of resources to get the job done.

A number of important provisions are added to Superfund: A realistic schedule to achieve cleanups is made part of the law; a new leaking underground storage tank cleanup program is enacted; citizen rights to judicial review are clarified; and settlement procedures are incorporated to deal with small contributors ranging from those who add but a single barrel to other de minimis parties such as a rural electric cooperative contributing one PCB-filled transformer. These and other provisions will strengthen current law.

Of special importance is section 121, which by establishing standards for cleanups will provide certainty to both public and responsible parties. Section 121 requires remedial actions that assure protection of human health and the environment, and which are cost effective. In determining whether remedial action is cost effective, the President is required to take into account both short- and long-term costs. Cost effectiveness is a consideration only after the President has determined the level of cleanup that assures protection of health and the environment.

In determining the minimum level of cleanup, section 121(d)(2)(B) authorizes the use of an alternate concentration limit [ACL] process, provided that, in a ground water situation, the assumed point of human exposure cannot extend beyond the facility boundary. In the case of ground water entering surface water, the conferees have made a limited exemption to such use of the ACL process. For this situation, in achieving a level of cleanup, there must be no point downstream where accumulation of hazardous consitutuents may occur which could lead to a statistically significant increase of such constitutents in the surface water, or organisms in such water, from such ground water. Although the use of ACL's may be appropriate in an extremely narrow set of circumstances, they must be narrowly circumscribed. The need for narrow interpretation and limited use is illustrated by the situation of Montana's Clark Fork River. The Silver Bow Creek site, along a headwater stream in the Clark Fork River drainage, has contributed to arsenic and other heavy metal pollution along at least 70 miles of stream. Contaminants are strewn the stream's length, possibly as far as Lake Pend Oreille in Idaho, as well as, concentrated in toxic hot spots in flood plains along an extensive stretch of the river. Although 121(d)(2)(B) expressly allows the use of ACL's, 121(b)(2)(ii) confines this use to an extremely limited set of extraordinary circumstances. Even the authorized use is confined to the purposes of this act, cleanups, and expressly prohibited for laws such as RCRA, which are intended to preclude any releases whatsoever. In addition to providing guidance on how clean is clean, the bill also clarifies the distinction between actions that constitute a restoration of natural resources and those that constitute remedial action.

There does not exist a hard-and-fast line between a remedial action and restoration of natural resources. Obviously, the more comprehensive a remedial action is, the less natural resource damage restoration is required. The difficulty of making this distinction is increased by the often subtle, difficult to detect nature of contamination by toxic chemicals.

Oil spills are visible. Hazardous substances and wastes often are not. But just as oil is to be completely removed under section 311 of the Clean Water Act, hazardous wastes are to be cleaned up under Superfund.

This bill, in section 111(c), created a new provision in 111(e)(2) under which the President is authorized to withhold payment of natural resource damage claims during any year that all of the Superfund moneys are needed for response actions. This provision does not in any way limit the viability or validity of these claims, either against the Fund or, under section 107, against responsible parties. Nor does it imply that congressional concern has lessened with respect to natural resource damages. Rather, the Congress has acknowledged that for the short term, the financial burden should be placed exclusively and immediately on the shoulders of responsible parties.

Trustees of natural resources continue to be responsible for the assessment of natural resource damages. Any determination of damages to natural resources made by either a Federal or State trustee in accordance with regulations promulgated under this act, has the benefit of a rebuttable presumption in any administrative or judicial proceeding. The trustees retain recovered funds for use without further appropriation and, specifically, may reimburse themselves for the costs of damage assessments.

The bill amends CERCLA to require that the President promulgate regulations for assessing damages to natural resources under section 301 not later than 6 months after enactment. Although a deadline for promulgation of these is already established by the court *New Jersey* v. *Ruckelshaus*, civil action No. 84-1668 (JWB) (DCNJ 1984), a later promulgation date was specifically set in SARA to allow additional time, if necessary, for reproposal of regulations required by section 301(c) in the event that the regulations submitted to the court are deemed inadequate. Because the Interior Department has ignored the intent of Congress and repeatedly erected barriers to the recovery of damages to natural resources, there is reason to believe this additional time may be necessary to the court. Certainly, the rules to date strongly discourage natural resource damage claims from ever being brought and would severely reduce recoverable damages in those few cases where they were sought.

These regulations also reduce the incentive on the part of industries to exercise care in order to avoid liability for natural resource damages. By thus failing to force these industries to internalize the true cost of their activities to society, the proposals issued to date are impediments to the restoration and replacement of resources, and incentives to careless, not careful, conduct.

Both CERCLA and the Clean Water Act establish natural resource replacement or restoration as the minimum measure of damage. The requirement in the DOI proposals that "the authorized official shall select the lesser of (i) restoration or replacement costs or (ii) diminution of use values as the

measure of damages" is an unreasonable construction of both the Clean Water Act and Superfund, with no basis in law.

The cost of restoration, replacement, or acquisition of equivalent resources—if restoration is impossible, plus any demonstrated additional lost use value, or other damage beyond such cost, is the correct measure of damages. If the restoration or replacement of resources is technically impossible, the lost use values and other damages—such as damages measured using the contingent value method or the willingness to accept method, plus the cost or acquiring equivalent resources, is the correct measure of damages.

The DOI rule also states, again improperly, that potentially responsible parties [PRP's] "under the direction and guidance of the authorized official may implement all or any part of the assessment plan finally approved by the authorized official." This would circumvent the intent of Congress and violate the law. Trustee's not PRO's, should do the assessment. PRP's may carry out ministerial duties in accordance with the trustee-developed protocols, but discretionary decisions of any consequence are to be made only by the trustees.

Involvement of PRP's, and of local citizens, environmental organizations, State and local officials, and any other interested persons, is crucial to the success of any natural resource damage assessment procedure. Interested persons should be provided the opportunity to participate in the assessment process, to the same extent that PRP's enjoy such an opportunity. This requirement is a matter of fundamental fairness as well as good public and environmental policy.

It is the intent of CERCLA that natural resource damage claims regulations facilitate natural resource damage claims, not block them. Nonduplicative State common law, or statutory remedies, are not preempted by CERCLA, even if certain federally cognizable damages for injuries to natural resources have been recovered under CERCLA.

There are very few types of potential private losses associated with natural resource damage that appropriately would not be subject to trustee recovery. However, losses are not intended to be subject to trustee recovery if they are subject to private recovery. Trustees should be barred from recovery of private losses only if it can be demonstrated that recovery under established applicable tort doctrine is available to a private individual who has suffered a loss.

The heavy reliance of the current regulations on market value is unjustified. While many resources such as wetlands may have a market price, it is far below the value of the resource to society because of the public uses and services provided by the resource. A land appraisal, while easily done, is a wholly inappropriate measure of the value of most public use resources. It is inconceivable that any reasonable person would suggest measuring the Grand Canyon or Yellowstone Park on the basis of a land appraisal. Indeed, most such resources were selected for governmental protection because of their unique or unusual character. Thus, by definition, it is impossible to measure their value by comparing them to the value of nearby, but ordinary, resources.

Trustees must have the option to use those market and nonmarket methods of valuation that, in the trustees' judgment, most accurately evaluate injury to natural resources and compensate the public for its losses. The unduly narrow definition of injury under Interior Department rules threatens present legal interpretation and might erode even common law. Interior's inordinately stringent acceptance criteria and proof requirements have resulted in the decision that many injuries to fish, wildlife, and other natural resources will be excluded in assessments. Trustees should be free to recover such injuries if they can show that it is more likely than not that the injury has been caused by the discharge or release, even if Interior's general rules do not recognize those injuries. The problems with the Interior Department's regulations extend to both type A rules and type B rules. Any model developed should be based upon restoration or replacement costs, plus any lost use value and other demonstrable damages.

Interior's type A rules are "applicable only to the assessment of damages to coastal and marine environments" (51 Federal Register at 16,636). The model excludes all freshwater rivers, streams, and lakes, including the Great Lakes, as well as all inland wetlands and lakes. This limitation is clearly not the intent of Congress. The majority of spills covered by CERCLA or section 311 of the Clean Water Act occur on areas not covered by type A rules or model. By Interior's own estimates, about two-thirds or even three-fourths of the liquid spills and 80 or 85 percent of solid releases occur in these exempted, nonmarine, nonestuarine areas. This limitation was clearly not intended by either CERCLA or section 311 of the Clean Water Act.

The proposed definition of "area affected" is unduly and unlawfully narrow. Requiring a minimum of 90 percent mortality of individuals, or at least 90 percent of the resident species, is an unreasonably high threshold. The law does not contemplate that natural resources in areas outside of this 90 percent/90 percent area are unworthy of detailed assessment. The rules and model improperly fail to consider subacute and chronic effects; for example, bioaccumulation and bioconcentration, impairment of reproductive success, neoplastic growths on fish, and certain other effects are intended to be included as injuries. It is not simply death that equals injury.

It is unreasonable to limit assessment to only one hazardous substance when multiple hazardous substances, or oil discharges, or releases, may be responsible for the injury. There should be no limitation on bird species so as to restrict assessment of injuries to only a limited number of birds.

The proposed rules appear to cover only sudden, accidental spills. This narrowing of the statute is unsupported by and directly contrary to the law. The law covers, and the rules should as well, all releases, nonsudden as well as sudden and nonaccidental as well as accidental. All minor releases or discharges also must be covered by these rules. The rules as drafted could exclude most or all NPL sites in the country, which is a comment on their inadequacy.

Any reasonably foreseeable damage done during a cleanup should be compensable under CERCLA. The rules should measure damages, based on replacement or restoration, or acquisition of equivalent resources—where restoration or replacement is technically impossible, plus any lost use value or other damages. The unjustifiable limitation on the rules and recovery would result in far less resource restoration, or replacement, than Congress had intended. I call these remarks to the attention of the distinguished floor manager and chairman of the Environment and Public Works Committee, Mr. STAFFORD. Does the floor manager concur with the remarks?

Mr. STAFFORD. The Senator raises a number of important points concerning the intention of Congress in addressing natural resource damages. I concur in those remarks, and agree with the statement he has just made.

Mr. BAUCUS. I thank the distinguished floor manager.

The amendments require the President to revise the national contingency plan, including the national hazardous substance response plan, within 18 months of enactment of these amendments. The President is to promulgate, by rule, amendments to the Hazard Ranking System [HRS] to ensure to the maximum extent feasible that the Hazard Ranking System accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. A substantive standard for the Hazard Ranking System is established that, to the degree feasible, it accurately assesses the relative risk to human health and the environment. It is important to recognize that the

Hazard Ranking System is not to be the equivalent of detailed risk assessment, quantitative or qualitative risk. These types of assessments are more appropriately included as part of remedial actions. Rather, the purpose of the provision is to require the Hazard Ranking System to rank sites as accurately as the agency believes is feasible, using information from preliminary assessments and site inspections, such as ground or surface water, or air monitoring data, or the equivalent information and identification of potentially and actually contaminated water supplies for sensitive environments.

Considerable concern has been raised that the current Hazard Ranking System does not adequately consider the toxicity concentration of hazardous constituents which are present in any release or threatened release.

The Hazard Ranking System review was included in these amendments in recognition of the unique problems posed by high volume, low toxicity sites, such as mine waste sites. Considerable concern has been raised that the current Hazard Ranking System unfairly ranks these types of sites.

In *Eagle-Picher Industries* v. *EPA*, 759 F.2d 905 (D.C. Cir. 1985), the U.S. Court of Appeals for the District of Columbia Circuit Court, upheld the Hazard Ranking System as an appropriate mechanism for placing sites on the national priorities list [NPL]. The court recognized that the NPL has a limited purpose—screening sites that might, after further study, warrant fund-financed remedial action.

While this act directs the agency to review the Hazard Ranking System in order to enable it to assess more accurately the relative risks presented by the sites considered, this provision is not intended to reverse or undermine the decision in Eagle-Picher. The Congress recognizes the Hazard Ranking System must continue to function as a screening tool that will allow the evaluation of a large number of sites in an expeditious manner. *Eagle-Picher*, supra, at 919–921.

To allow the Administrator to continue adding sites to the NPL while the HRS is reviewed, the act provides that the current HRS be applied until the effective date of the revised HRS.

During the interim period while the Hazard Ranking System is being reviewed, in determining whether to list mining waste sites, petroleum muds and brines, cement kiln waste sites or other special study waste sites—except fly ash sites, the President is to ensure that adequate consideration is given to onsite factors and to the specific nature of a site, prior to its inclusion on the national priorities list.

SUPERFUND PETROLEUM EXCLUSION

Mr. BENTSEN. I would like to ask a question with regard to the effects of this legislation. It is my understanding that these amendments would not diminish the scope of the present exclusion from liability for petroleum found in section 101(14) of the act. Is my understanding correct, Senator.

Mr. SIMPSON. Yes, the Senator from Texas is correct in his interpretation. This bill will not diminish the scope of the present petroleum exclusion. That provision, found in section 101(14) of the act, excludes from the definition of "hazardous substance" all types of petroleum, including crude oil, crude oil tank bottoms, refined fractions of crude oil, and tank bottoms of such which are not specifically listed or designated as a hazardous substance under the other subparagraph of that provision.

Mr. KENNEDY. Mr. President, today, the Senate has passed one of the most significant pieces of environmental legislation of our time—the Superfund Amendments and Reauthorization Act of 1986.

Citizens across our country who have despaired over the nightmare of toxic chemicals fouling their air and poisoning their drinking water can seek solace in the fact that, after months of discussion over this complicated legislation, Congress has agreed that further delay is intolerable.

The new superfund bill strengthens current law in its ability to clean up toxic wastesites and leaking underground storage tanks, and provides $9.0 billion to accomplish the task.

No piece of legislation is perfect and the Superfund bill is no exception. Indeed, I would have preferred to retain a number of provisions that were rejected by the conference members, including a Federal cause of action for victims of toxic waste and greater access for citizens to prevent an imminent and substantial endangerment to health or the environment. But I firmly believe that this Superfund bill is a legislative achievement worthy of its enactment.

We must look to the accomplishments of the bill. We have established a system of standards that will require that any cleanup at a site meet high levels of water and soil standards. We have also developed procedures to ensure that communities are aware of the extent of the contamination and potential threat to their health or environment. And we have provided $9 billion, a fivefold increase over the current level, to ensure that no site will fail to be cleaned up for lack of funds, when those parties responsible for the contamination are insolvent, unavailable, or refuse to meet their obligation to our society. No longer will our Government tolerate parties who balk by pursuing endless judicial remedies—the cleanup will continue while the Government imposes penalties on the irresponsible parties.

I am pleased that the bill includes an amendment that I sponsored to direct $15 million for pilot programs to remove lead contaminated soil in three metropolitan areas across our country. In the city of Boston alone, over 1,500 children have been stricken with the tragic effects of lead poisoning—and most of these children are from low-income families, who are ill-equipped to deal with the long-term medical costs associated with treating lead poisoning. This pilot program will provide EPA with valuable information to serve as the benchmark for a future, more comprehensive response to deadly concentrations of lead in the environment.

I sponsored other provisions contained in the bill which the people of this country have been demanding for years:

Increasing the level of funding from $15 million to $275 million for health studies for victims of toxic waste; and

Procedures to avoid delays, such as those that occurred at the resolve site in North Dartmouth, to ensure that any potential threat to the health of citizens or the environment can be resolved expeditiously, without the administrative delays that have traditionally plagued the program.

With the new Superfund bill, our Government has the weapons to stop the atrocities that have existed in communities across our Nation. In my own State of Massachusetts, residents of communities who live with the danger of a toxic wastesite have made repeated but fruitless calls to the Federal Government for assistance. During the past 6 years, since the enactment of the original Superfund law, not a single site in Massachusetts has been cleaned up, not a single threat to the public health has been entirely eliminated.

When I listened to the residents of these communities and visited the sites that they fear, I pledged that we would resolve this intolerable situation. Now, the Senate has responded by passing a strengthened Superfund bill.

I applaud the progress that has been accomplished and call upon the President for immediate approval of this legislation.

This investment in a clean environment and the health and safety of our citizens will reap innumerable rewards for present and future generations across our Nation.

Mr. WALLOP. Mr. President, I would like to express my concern for the direction in which the Superfund conference agreement takes us. I am pleased that the conferees were able to come to a well-reasoned conclusion regarding a waste end tax. Not only is such a tax administratively cumbersome but it raises grave equity questions when applied to the real world. Such a tax would create a pollution tax which would be applied with the

same rough justice approach of the Salem Witch Trials.

I cannot support the agreement wholeheartedly. First, the agreement substantially increases the tax on petroleum. The new tax of $2.75 billion is imposed at the worst possible time for this struggling industry—at a time that the industry is least able to pass the new tax along. Despite what many people argue when discussing an oil import fee, there is no "free market" in oil or any form of energy.

Second, the agreement does not reflect the societal nature of the problem. The cost of cleaning environmental problems should be based on the principle that the polluter should pay. The Environmental Protection Agency has identified more than 6,000 potentially responsible parties that have disposed of wastes at sites that are now abandoned—including virtually every U.S. manufacturing industry and many Government agencies, including the military. Petroleum companies make up only a very small percentage of that list. The broad-based tax introduced by Senator BENSTEN and me recognized that Superfund is designed to clean up a societal problem. That is, it is to resolve problems that cannot be traced to any industry or group. These problems were brought about as a result of activities that benefited all in our society, no matter how ignorant we might now deem those activities. I support the goals of Superfund. And believe that they should be carried out in the most expedient and cost-efficient way possible. But I cannot support a funding mechanism that unfairly places a huge burden on one particular industry. This package appears to be based on the principle of deep pockets, that the oil companies can afford it. We cannot continue to consider energy or the companies that produce it as the benefactor of America. American energy producers do not have endless funds, nor are there endless sources of energy. I'm afraid that Americans, as represented by this Congress, appear to insist on learning both lessons the hard way.

Third, the conference report like the recent tax reform bill appears to be a major concession to the House's position. The funding level is much higher than that of the Senate bill. Many of the problems which are the focus of Superfund cannot be solved by throwing money at them. We are providing almost twice as much as the EPA believes they can intelligently spend over the next 5 years. In addition, the form of taxation primarily reflects the House position. The conference agreement uses a petroleum tax as the major funding source, rather than the broad-based tax of the Senate bill. The conference agreement is substantially closer to the House bill than to the Senate position.

I cannot support the method of funding, because it is inherently unfair and does not reflect real world considerations.

Mr. BOREN. Mr. President, all of us want to take necessary action to clean up hazardous wastesites in this country. I strongly favor the goals and objectives of this bill. Unfortunately the method of financing this Superfund Program is flawed. This tax proposal now before us for consideration is based on three premises, each of which is false. Therefore, unless improved, its enactment will prove needlessly destructive to U.S. energy security.

First, the tax proposal assumes that U.S. oil companies are lightly taxed in general. Second, the tax proposal assumes that U.S. oil companies are principal contributors to abandoned hazardous wastes. Third, the proposal assumes that the petroleum sector of our economy can afford to pay billions of dollars more in Superfund taxes without damage to oil and natural gas exploration and production. But, the facts tell a much different story on each one of these points.

First, the petroleum sector of the U.S. economy is not lightly taxed but heavily taxed. During the 1980's the U.S. oil industry has paid Federal taxes at a rate considerably higher than nonoil companies. A study by the staff of the Congressional Joint Committee on Taxation, covering the years 1980 through 1983, shows that the petroleum industry paid taxes at an effective corporate income tax rate 28-percent higher than the average of other industries. Furthermore, that study did not include the large special Federal excise tax on oil production—the so-called windfall profits tax. When that tax is taken into consideration, the U.S. petroleum industry paid Federal taxes at a rate higher than that of all major industries covered by the study.

During 1985, 20 leading U.S. oil companies paid Federal income and windfall profit taxes at a rate of 36 percent of net income. That rate is 50 percent greater than that of 100 leading nonoil companies.

Furthermore, the tax reform bill passed by Congress and soon to be signed by the President, will add to the industry's heavier than average normal tax load. That tax bill will cost the petroleum industry a minimum of $10 billion in additional taxes over 5 years. The estimated total increase in corporate income taxes under the bill is $120 billion for that period. The petroleum industry's share of the total income of the national economy is 5 percent. Five percent of $120 billion is not $10 billion but $6 billion.

The Superfund tax proposal now before us would further imbalance the tax burden carried by the petroleum sector. It would require that oil companies pay one-third of the $8.5 billion package—as much as all other industries combined.

Imposing greater Superfund taxes on the industry could still be justified if, as the proposal presumes, these companies are major contributors to abandoned hazardous wastesites. Cleanup of these sites is the major purpose of the Superfund Program. But oil companies are not major contributors. The Environmental Protection Agency has identified more than 6,000 potentially responsible parties that have disposed of wastes at sites that are now abandoned—including virtually every U.S. manufacturing industry and many Government agencies, including the military. Petroleum companies make up a very small percentage of that list. Most petroleum industry waste is water that is treated and disposed of according to law and not disposed of in dumps that could become Superfund sites. Most other petroleum company wastes are either recycled or are incinerated, treated or otherwise disposed of on the facility's own property. If others dispose of petroleum products improperly, they should pay to clean them up.

A proponent of the Superfund tax proposal might still argue that, fairness aside, the petroleum industry is so rich and healthy that it can afford to pay a disproportionate share of the increase. But, the industry is not rich and healthy. The depressed conditions in the oilfields are well documented. The domestic drilling rig count is down from more than 4,000 in 1981 to 2,000 at the beginning of 1986 to some 700 today. Oil and natural gas well completions are running more than 40-percent below the 1981 level. Domestic consumption is rising. U.S. dependence on imported oil has climbed to 40 percent. In fact, the U.S. oil import level is now at its highest in 5 years. A greater percentage is now coming from OPEC nations than OPEC provided in 1973, the year of the Arab oil embargo.

I am pleased that Senator BENTSEN and others worked hard to establish a differential between domestic and foreign crude oil taxes in this bill. The Senator from Texas deserves credit for his fight to reduce the inequities in the bill. Given current market conditions however, I am afraid that domestic producers may still be faced with absorbing a large increase in tax burdens and that the differential will not have as much impact as it might have under other market conditions. Additional Superfund taxes, on top of the oil industry's already heavy tax burden, will—without a doubt—further reduce U.S. exploration and production, thus paving the way for still more rapid growth in our dependence on foreign oil.

We all agree that cleaning up abandoned hazardous wastes promptly is a vital objective. It should be done. It must be done. But, in reaching that objective Congress should enact a tax bill that is based squarely on the fact. The bill now being considered does not meet that test. Therefore, it should not be enacted in its current form.

Mr. BYRD. Mr. President, the conferees from the House and Senate, particularly Senators BENTSEN, STAFFORD, and LAUTENBERG, are to be commended for their efforts to reach an agreement on the reauthorization of the Nation's Superfund Program. They have worked long and hard to reach the agreement on the major programmatic differences between the two bills, and in the last few days, the conferees were able to agree on the appropriate mechanism for funding the $9 billion reauthorization.

Agreement on this major piece of environmental legislation is an important step toward the goal of cleaning up the Nation's abandoned toxic waste-sites. It means that the Environmental Protection Agency can begin the identification of new toxic waste-sites, and renew its efforts to clean up sites already on the national priority list.

It provides for a funding level of $9 billion through a combination of a broad-based fee, petroleum and feedstock taxes, general revenues, and miscellaneous receipts. The sources of hazardous wastes are diverse. Therefore, such a funding mechansim, as that adopted by the conferees, is a fair and equitable way to fund the cleanup of our abandoned hazardous waste-sites.

Basic West Virginia industries such as chemicals, steel, and oil and gas, are facing ever-increasing competition from foreign imports. This mechanism not only equitably distributes the cost burden, but it is also not detrimental to our trade situation. By maintaining the current level of feedstock fees paid by the petrochemical industry, the conference report recognizes the importance of maintaining that industry's ability to compete in the domestic and international marketplace.

Again, I applaud the efforts of all the conferees and I urge the adoption of this conference agreement.

Mr. CRANSTON. Mr. President, I'm pleased to support the conference report on the Superfund reauthorization bill. This is a measure of tremendous significance to California and the rest of the Nation and essential in moving forward with the critical task of cleaning up dangerous toxic sites.

The conference report includes important new provisions on cleanup standards, cleanup schedules, leaking underground storage tanks, citizens suits, and community right-to-know programs critical to alerting citizens of hazardous waste and emergency response planning. These programmatic changes should bring about significant improvements in the program and help accomplish our task of cleaning up hazardous waste.

The conference report also provides money essential to do the job—$8.5 billion—and an equitable sharing of the burden of financing the program.

We are going to need much much more in the future, but this legislation is vital in adressing the hazardous waste problem.

We cannot let this program so critical to the Nation's health and safety lapse.

I hope the Senate will unanimously approve this legislation and that the President will sign the bill.

Mr. ROTH. Mr. President, I am extremely pleased to be able to vote on this Superfund conference report today. We are considering legislation that was agreed to by the conferees on the programmatic portion of the Superfund conference after many months of tough and enormously complex negotiations. These negotiations were led by my distinguished colleague and very good friend from Vermont, Senator STAFFORD. It was because of his outstanding leadership on many of the controversial issues that the Superfund conferees were able to complete the important programmatic component of this extremely important piece of legislation.

In addition, Mr. President, I am extremely proud to have been a Senate conferee involved in the intricate final negotiations on the funding of Superfund. Under the able guidance of my good friends and distinguished colleagues from Oregon, Mr. PACKWOOD; from Kansas, Mr. DOLE; from Louisiana, Mr. LONG; and from Texas, Mr. BENTSEN; we were able to find a stable long-term funding solution to clean up our hazardous waste sites.

During our long and arduous negotiations we were able to achieve funding for a Superfund Program that is based on an equitable sharing of the funding burden. It is based on a broad-based tax, a petroleum tax, and a chemical feedstock tax. No waste end tax was included.

The bill authorizes $8.5 billion in Superfund spending during the next 5 years. This represents a fivefold increase from the $1.6 billion authorized for the program's initial 5 years. In addition, the bill authorizes another $500 million for the new underground petroleum tank cleanup program.

I have always been a strong supporter of this program, and I hope that we have arrived at a point in time that enables us to continue with our toxic waste cleanup program. I urge my fellow colleagues to support it and urge the President to sign it as soon as it reaches his desk.

Mr. RIEGLE. Mr. President, I am very pleased that Congress will pass the Superfund Program this year. This is a critical program for many people in my State, as it is for people across the Nation. It is essential that it be reauthorized so that we can get on with the important job of cleaning up toxic waste sites. I hope in doing so, we convey to President Reagan a strong message of support for this program.

The importance of this program cannot be overstated. Since the program was enacted in 1980, we have discovered many more abandoned and leaking hazardous waste sites in this country than had originally been predicted.

The Environmental Protection Agency now tells us that there are 17,000 possible abandoned sites across the country and that as many as 2,500 may require remedial action. In my State of Michigan alone over 1,000 dumpsites with the potential to contaminate ground water have been discovered. We have 66 sites on the national priority list for cleanup action.

There is no question that the cost of cleaning up these sites is very high. Long-term remedial action where no ground water contamination has occurred averages $4 to $6 million per site to complete the studies and remove contaminated soils. Where ground water is contaminated, cleanup costs can run $17 million or more. The Michigan Department of Natural Resources estimates that it would cost at least $2.9 billion to clean up 600 of the sites in my State alone.

The problem is huge, the cost is great, and progress to date in cleaning up sites has been slow. There are currently 888 proposed and final sites on the national priority list [NPL] for cleanup activity. While the EPA says that remedial investigations and feasibility studies are under way or have been completed at half of these sites, cleanup work is completed at only 11 NPL sites. We clearly have a long way to go to remove this threat to our national health.

Because the scope of the problem is so large, the measures that we have been considering to deal with it are equally large and, consequently, controversial. I would rather support another financing package if one were available. But in order to take care of the hazardous waste problem, we need to make an economic commitment.

I would urge the President to sign this bill into law. I believe hazardous waste cleanup activities need to be a top priority in this country. We need a strong Superfund package so that the people of this country will not have to live in fear. We have heard them ask for help. We should do everything we can to make sure that dangerous hazardous wastes are cleaned up as quickly, efficiently, and effectively as possible.

Mr. HEINZ. Mr. President, I commend the Senate conferees on the Superfund reauthorization, particularly my colleagues on the Senate Finance Committee, for their successful efforts. The conference report before the Senate will expedite cleanup at the 65 Pennsylvania sites now on the Superfund national priorities list, provide protection to our citizens and our communities, and raise revenues for Superfund in a responsible fashion.

Mr. President, it has been a long and hard road to reauthorization. Those who would hold Superfund hostage to unworkable taxing proposals have delayed reauthorization for nearly a year. A lot of time has been lost in the resulting slowdown, and I believe that when this agreement is approved—and I hope it will be approved—EPA will have to keep up the most ambitious cleanup schedule possible.

Remedial action must be commenced at no less than 375 Superfund in the next 5 years. The national priorities list contains 703 sites at this time, and that figure could more than double in the next few years. We have our work cut out for us. As good a package as this one is, still more will have to be done in the coming years.

I am particularly pleased that the conference report takes steps toward addressing the problem which leaking underground storage tanks pose to ground water. In addition, the right-to-know provisions would require certain manufacturers to report to emergency and environmental officials information on chemical inventories and harmful emissions to the environment. Reform of the State's statutes of limitations for harms inflicted by toxic waste is also a positive step. I applaud the conferees for their work to enhance the safeguards against toxic waste.

I join my colleagues in calling for the approval of the conference report, and express my strong desire to see the President enact it into law.

Mr. DURENBERGER. Mr. President, too much has been said about this bill already. And another blizzard of words on Superfund will drift across the pages of the RECORD today. Knowing that whatever I say will be disputed, refuted, confounded, and undone by at least a dozen, if not a score or more, of other statements, equally telling, will keep my comments brief.

Mr. President, Superfund reauthorization has been a travail. It has been a struggle. It has gone on too long. It has been too difficult. We all want Superfund. We have all given it our full support all the way through the process. But we are most thankful that the process will conclude with the adoption of the conference report today.

When the bill was before the Senate about 1 year ago, I came to the floor to express concern about the future of the Superfund Program. I have been an active participant in the conference over the last year. Much of what I, and the other members of the Committee on Environment and Public Works, worked so hard to achieve is contained in the conference report now before the Senate. There is much in this bill that I like. Nevertheless, today, even as we send a 5-year reauthorization to the President, I remain troubled about the future of the Superfund Program.

Let me express that concern this way. When it was adopted in 1980, Superfund was designed to assure that those who are responsible for the release of hazardous substances into the environment would also bear the responsibility of responding to the threats that those substances pose. That was the theory of Superfund.

The theory was incorporated into the law in two ways. First, the program imposed strict, joint, and several liability on those who manufacture, handle, and dispose of hazardous substances. Second, a tax was imposed on petrochemical feedstocks to finance a response trust fund that could be used to pay for cleanup where no responsible party could be found. That is the structure of the 1980 law, Mr. President.

As we began the reauthorization process in 1984, Superfund was under attack on both fronts. Members of the Congress from States where the petrochemical industry is an important part of the economy objected to the tax. They proposed the so-called broad-based tax as an alternative.

And on the liability side of the equation, the insurance industry, which was experiencing a downturn in profits as a result of falling interest rates, and other elements in the manufacturing sector of our economy urged that strict, joint, and several liability be diluted in a variety of ways.

All through the reauthorization process we have watched these twin attacks on the Superfund Program play out. I would like to think that I have been throughout this process firmly and steadfastly in the camp that was determined to defend the two fundamental elements of the 1980 statute. And as we wrap up the conference report today my view is that we have achieved at least a draw.

There is a broad-based tax. It is not as big as originally proposed. The feedstock and petrochemical taxes are continued. The program has been greatly expanded. New elements have been added. It was necessary to find additional revenue. And the burden for this program has been shifted away from the elements in our economy which generate hazardous substances and spread more uniformly across all sectors. So we have yielded to the broad-based tax.

But on the question of liability we have held firm. The rule is still strict, joint, and several liability. The liability scheme in Superfund is dented here and there by this conference report. But the fundamental principle is still intact. That is a major victory accomplished by the Senator from Vermont, the distinguished chairman of the Committee on Environment and Public Works. Senator STAFFORD'S steadfast adherence to this principle has been the one thing that everyone could count on from the very day this reauthorization process was begun.

Mr. President, we will over the next few days hear many in the administration suggest that this bill should be vetoed because it departs from the polluter pays theory adopted in 1980. They oppose the broad-based tax. But as my comments are intended to make clear, we have not experienced a complete defeat on the polluter pays question. We have preserved the full liability of the responsible party. And if the administration is sincere about polluter pay, they have a ready instrument to put the theory into practice. The President can enforce the Superfund law. The President can recover the costs of response from those who cause damage to the environment or threaten the health of our citizens. The President can recover every dollar of the broad-based tax imposed by this act by pursuing the polluters in cost recovery cases.

Whether we have preserved the polluter pays theory of the 1980 law, is a question yet to be answered. It will depend in great part on the way the program is implemented over the coming years. If EPA uses the full reach of the liability principle contained in this statute, the polluter will pay. If not, Superfund is destined, as I said here on the floor of the Senate about a year ago, to become just another public works program.

Mr. NICKLES. Mr. President, I rise today to express a sincere disappointment in the Superfund conference report.

In reauthorizing Superfund we are continuing a commitment to cleanup our environment, to remove the hazards that threaten our drinking water, our property, and our communities. I support that effort wholeheartedly. Unfortunately, we are trying to achieve that end by placing an inordinate tax burden on one industry, the petroleum industry.

The funding mechanism designed to fund this program increases taxes on crude oil by a factor of five. The net effect of this provision is to require that the oil industry pay over 50 percent of the entire program.

Now, some people say that we should tax the groups that are the most responsible for the waste that Superfund is designed to clean up, and as a matter of policy I agree with this. Unfortunately, people have been

hoodwinked into believing that the major cause of hazardous waste at our Superfund sites is the petroleum industry. The facts tell a much different story:

EPA has compiled a list of "potentially responsible parties" [PRP] at Superfund sites. This list includes companies from all over the country in almost every aspect of manufacturing. If we were to actually follow the policy that the "polluter pays," then the petroleum industry would really have to pay less than 20 percent of the total taxes for this program, as determined by the number of sites in which they have been directly identified as a polluter.

The conference report that we have before us presumes guilt on the part of the petroleum industry merely for producing and refining crude oil. What it says is that since the oil industry is the original source for many of the pollutants that we find in Superfund sites, they must be responsible for paying for the program—no matter the company which actually disposed of the waste, no matter the extent to which the polluter contributed to the overall societal problem which we face today.

We are facing a question of equity. This is not a "polluter pays" financing mechanism. We are forcing an industry that is already suffering immensely to shoulder a societal burden for which it is only partially responsible. What we are doing is kicking an industry while it is down on its back.

To give you an idea of the effect of these provisions, let me cite a few numbers. We are increasing the tax burden on the petroleum industry by over $3 billion. One company in my State, Conoco, will face a tax increase of around $11 million a year under this program. Phillips Petroleum will face an increase of about $20 million a year. These taxes, furthermore, have no relation to the profitability of the company. Right now most oil companies are cutting back; people are being laid off, budgets are being slashed, and the unemployed rolls in my State as well as others are swelling at frightening rates.

Mr. President, the hazardous waste dumps that dot the countryside present a dire problem to our whole society. In seeking solutions to that problem, we must include our whole society. We all must be responsible for ridding our landscape of this blight, and we should not be content to lay the burden on only one industry when the fault rests in all of us.

Mr. CHILES. Mr. President, the amendments to section 105 call for revision of the hazard ranking system and would apply the revision prospectively to new candidates for the national priorities list. This bill makes it clear that the Environmental Protection Agency is not obliged either to apply the revised hazard ranking system to sites already listed on the national priorities list or to rescore the sites.

I believe, however, that this should not preclude the Environmental Protection Agency from taking a second look at a currently listed site, where an error might have been made in the original scoring because of questions about whether or not two wells were in operation.

I am specifically referring to the Munisport site in the State of Florida. The city of North Miami acquired this site from the State in 1970 for a recreational complex. Before the complex could be built, fill was required. So, between 1976 and 1980, a municipal landfill was operated on designated portions of the site under county, State, and Corps of Engineer permits.

In 1983, the site was placed on the national priorities list where it occupies the 466th spot. The site scored 32.37; any score above 28.5 qualified a site for listing. One of the main reasons for this high score was the fact that the scorer recorded two well fields servicing the cities of North Miami Beach and North Miami within 3 miles of the site. However, the city of North Miami has stated that both well fields had permanently ceased operation because of saltwater intrusion, one 3 years before, the other 2 months before the site was proposed for listing in 1982.

Florida's environmental agency recalculated the score as 10.57, a full 18 points below the qualifying score for the national priorities list. EPA acknowledged in its 1984 remedial action master plan for the site that both well fields were closed. Both the State and the city have asked EPA to rescore the site, and remove it from the national priorities list.

I am a very strong supporter of the Superfund Program, but I believe that the EPA needs to take a closer look at why this site was put on the national priorities list. It's my understanding that the city of North Miami and the State of Florida are already conducting a $205,700 study in preparation for capping and closing the site in accordance with State law. I believe that the EPA needs to work with the city and review this data instead of requiring a more costly remedial investigation before the Agency will consider delisting.

Is it the position of the conference committee that a currently listed site can be rescored if the EPA concludes that there was a verifiable factual error? If the new score justifies it, can the site be removed from the national priorities list without a costly and time-consuming remedial investigation or cleanup effort?

Mr. STAFFORD. Without agreeing or disagreeing with any of the factual representations made by the Senator, the Environmental Protection Agency has the statutory authority to rescore a facility prior to a remedial investigation and feasibility study where the Administrator determines, in his discretion, that a significant factual error was made in the scoring of a facility and such error would cause the facility to be removed from the national priorities list.

Mr. WILSON. Mr. President, I rise with great pleasure to endorse the conference report agreement on the reauthorization of the Superfund Program. I applaud the fine work of the conferees in bringing this report to the floor. In my opinion, this conference report agreement represents the most significant work on important environmental legislation in this the 99th Congress, and I'm elated that work on this bill has finally been completed even at this late date.

Most of my colleagues are aware that California has much at stake in this bill. My home State lays claims to the unenviable distinction of containing some of the worst contaminated sites in the Nation. Without this program, cleanup at sites throughout California will languish or stop altogether, and the health hazards that they pose to the ground water sources that service literally millions of people will continue to multiply. Fortunately, with this conference agreement, we can be assured that critically needed cleanup will continue.

I am especially appreciative of the willingness of the committee members to include language at my request in this new Superfund Program that specifically addresses toxic waste problems at military installations. Having conducted hearings on this problem at four installations in California last summer, I have become well aware of the need to make a special provision in the law to address this serious matter. With this bill enacted into law, we will finally have a special program established at the Department of Defense that is exclusively dedicated to the proposition of environmental restoration.

My heartfelt congratulations to the Environment Committee for successfully completing action on this conference report, and I urge its adoption.

Mr. KERRY. Mr. President, today is a proud—albeit an overdue—day for the Senate. For today, we are set to reauthorize what is perhaps the most important environmental program that Congress has legislated in the last decade. I want to commend the bill's conferees for the dedication, diligence and creativity they have shown in pursuit of this reauthorization. They understood the challenge that faced them. They persisted over many months. Through periods in which it appeared that the Superfund Program would be allowed to whither away the

conferees determined that they would not let that happen. The result here today is a strong and responsible reauthorization of this vital program.

A recent event in Massachusetts is evoked today as we prepare to vote. It was only several weeks ago that several residents of the town of Woburn finally settled a case that had been pending for many years. In it they had alleged that a private company had been responsible for the leukemia that was highly prevalant in their area. They were on the verge of proving the causal link when the company settled out of court. I know that the events in Woburn had a great deal to do with my State's awareness of the problem of our toxic waste legacies. And I know that the Woburns and the Love Canals moved this issue to the top of the national agenda.

The 1981 debut of Superfund could have been better. The short shrift the administration gave it accentuated the flaws in the enacting legislation and the low level of funding did at times hamper our efforts to tackle cleanup problems. But we learned a great deal from those years of experience and I think that it allowed Congress to develop a reauthorization that will work more efficiently in the future.

I would have preferred more time to study the funding mechanism that the conferees have used. Completion of the conference report, only last night, makes careful study impossible. I know how difficult it is to determine who should shoulder the burden when it comes to funding Superfund. While I know that not everybody will be happy with this new tax arrangement, it is my impression that this formula represents shared responsibility.

Let us hope that we can look forward to the end of the uncertainty that has plagued the Superfund for the last few months and that we may soon be able to make toxic waste problems history. Again, let me commend my colleagues on their fruitful efforts.

Mrs. HAWKINS. Mr. President, I rise in strong support of the conference report on the Superfund reauthorization legislation. It is absolutely vital that we pass this bill in order to continue and accelerate the progress we have made thus far in cleaning up the thousands of toxic waste sites which poison our land, our air, and our water.

The State of Florida ranks sixth in the Nation with 35 sites on the National Priority List. Florida is built upon a network of aquifers—these toxic sites sit directly upon Florida's groundwater supply. Florida is one of the few States in the Nation which depends almost exclusively upon its ground water to provide its drinking water. Florida's aquifers lie perilously close to the surface, with a minimal layer of intervening rock or soil to filter out dangerous contaminants. Hundreds of wells have had to close in recent years due to toxic contamination.

Yet, EPA informs me that absent a Superfund reauthorization package in this Congress, the Agency will be forced to halt all work on all sites in Florida. Already, EPA has stopped work on four Superfund sites in the State.

The uncertainty which has plagued the program over the past year has slowed the cleanup effort to a dangerous pace. The longer we delay in providing the program adequate funds, the more we threaten the programs' future viability. We must pass this legislation now, if we do not we are placing public health at serious risk.

The package before us today contains many provisions which will provide better protection to the public. It sets up a framework which would: Ban disposal of hazardous waste at leaking landfills, encourage permanent waste treatment where it is feasible, repair the hundreds of thousands of leaking underground storage tanks, require review of cleaned sites every 5 years, and require chemical manufacturers to inform local authorities and the public of dangerous substances routinely released into the environment and the potential health effects of such emissions.

Mr. President, there are an estimated 22,000 hazardous waste sites across the Nation which need cleanup. This estimate may represent only the tip of the iceberg. The longer these sites remain untended, the greater the threat they will seep into our water supplies, contaminate land and threaten the health of millions of Americans. I urge the adoption of the Superfund conference report.

Mr. D'AMATO. Mr. President, I rise today in support of the Superfund conference report. As one who has contacted the conferees on several occasions to urge prompt action on this bill, I am glad to see that we have broken through the long delays and have reached the point where it looks like the full Senate will pass a strong, $8.5 billion 5-year reauthorization.

This long-awaited day is tempered, however, by threats of a Presidential veto. This would be devastating to New York, which has the third highest number of Superfund sites in the Nation, with 57 sites on the national priorities list, and another 8 which have been proposed for inclusion on the list.

The voters of New York soon will consider proposition 1, the Environmental Quality Bond Act of 1986. This is an act which demonstrates New York State's commitment to cleaning up these toxic wastes, but it is all part of an overall effort which depends on Federal Superfund money.

Mr. President, I think it is unfortunate that the clock is ticking, in light of the threat of a pocket veto. We could all stand here and bemoan the fact that this conference report has reached us at such a late hour. However, I think at this point the main priority is for each of us to urge President Reagan to sign this legislation and to let the cleanups continue. I am here today to do just that.

This conference report will provide a strong, $8.5 billion Superfund Program. This is a more than fivefold increase over the former program. Cleanups would have to meet standards and requirements of Federal and State environmental laws. This bill will bar disposal of Superfund waste at leaking landfills, will require permanent waste treatment when practicable, and will require review of cleaned sites every 5 years. EPA will be required to ensure that long-term cleanup work begins at no fewer than 375 Superfund sites over the next 5 years.

As the sponsor of S. 606, the Community Right-To-Know Act of 1985, I am especially pleased that this conference report contains right-to-know provisions which will require certain manufacturers to report to emergency and environmental officials information on chemical inventories and emissions to the environment. Under this bill, States will establish emergency planning districts for chemical leaks from facilities.

A research and demonstration program will be authorized to encourage development and use of new hazardous waste treatment technologies that could be used for permanent cleanup of Superfund sites.

Mr. President, I could go on detailing this conference report, but I think the bottom line is this: We simply cannot have any more delays. The health and safety of our citizenry is at stake. I urge prompt passage of this conference report, and I urge President Reagan to sign the bill so that these cleanups may begin.

Mr. KASTEN. Mr. President, I rise to express my support of the Superfund conference package offered today. Reauthorization and funding of the Superfund hazardous waste cleanup program is essential to the health of our citizens and to the preservation of our environment.

Although this package is not perfect, the conferees reached a compromise after difficult negotiations. The new legislation provides for $8.5 billion in Superfund spending during the next 5 years. Of that amount, $2.75 billion would come from taxes on petroleum; $1.4 billion from feedstock chemical taxes, $2.5 billion from broad-based tax on corporate income, $1.25 billion from general revenues, and $600 billion from interest on money from the fund itself. The funding mechanisms in the conference report are an improvement over the Senate adopted value-added tax. However, I am critical

of some of the tax provisions, particularly the broad-based tax. Nevertheless, I feel it is crucial that we all compromise and adopt this bipartisan effort to reauthorize and fund this vital program.

I believe that a strengthened Superfund is essential to protecting the health and safety of all Americans. We simply cannot tolerate further delay in strengthening this essential program to protect health and safety.

Mr. BENTSEN. Mr. President, let me conclude by saying how much I appreciate the leadership of the distinguished chairman of our committee. It is truly a bipartisan committee and we work together across party lines on what is best for our country. I want to congratulate the distinguished Senator LAUTENBERG, from New Jersey, who brought with him his experience and understanding of this issue. I must say that Senator SIMPSON, with his good humor and judgment, made a major contribution. I would also say that JOHN DINGELL, chairman on the House side, as Senator SIMPSON stated, had a firm hand and did a dedicated job. Without his help, I question there would be resolution on the House side.

Mr. President, what we have done here, I think, is a very major piece of legislation that will do much to protect the health of America and improve the environment. We have offered what we believe are some permanent solutions to the problem. I would strongly urge the President of the United States to recognize what has been done here to satisfy the concerns of the people of this country and sign this legislation.

Mr. STAFFORD. Mr. President, if there is any time remaining, I did want to express my gratitude to Senator BENTSEN for the splendid way in which he has helped to get this legislation before the Senate. It is always easy to be bipartisan when you have people as pleasant and cooperative to work with as Senator BENTSEN has always been.

One group that made it possible for us to achieve this conference report has not been mentioned. I want to express my personal appreciation and that of the committee to the staff of the Environment and Public Works Committee for all the difficult and long hours that they put in to make it possible for us to achieve agreement in the conference report I yield back the remainder of my time.

Mr. DOLE. Mr. President, I am pleased that we are finally ready to act on a comprehensive Superfund bill. This conference agreement really has been 2 years in the making, and ideally it should have been reached a long time ago. The conferees on both the program side and the funding side have put a lot of hard work into this agreement, and the result is a bill that should keep the Superfund operating at full capacity over the next 5 years.

The problem of abandoned hazardous wastes remains an urgent one, and it is something we have an obligation to deal with. In truth, no one has seriously disputed the magnitude of the hazardous waste problem, or the need for a strong Federal role in responding to that problem. The controversy that has delayed the reauthorization of Superfund has instead revolved around the nature of the Federal role, and on the best way to allocate the burden of funding a Federal response.

Mr. President, those have never been easy questions. I know that the distinguished chairman and ranking member of the Environment Committee, Senators STAFFORD and LAUTENBERG, had to make some tough decisions in negotiating with the House over the best way to use the Superfund. Similarly, the conferees on the tax title—of which I was one—had to swallow hard to reach agreement with the House. But we did reach agreement, and it seems to this Senator that we ought to wrap it up, given all the work that has gone into crafting this package.

CONCERNS ABOUT FUNDING

Mr. President, I agreed to sign the Superfund tax conference agreement because it is important we show solidarity in supporting this very delicate compromise. Nevertheless, I do have serious reservations about this funding package—many of which are shared by the President of the United States.

As in any successful compromise, we have made sure that everyone gives a little. Over the next 5 years chemical producers will continue to pay $1.4 billion in feedstock taxes, which is essentially what the original 1980 program called for. In addition, the general revenue contribution is raised to $1.25 billion—a significant increase, but only slightly higher as a percentage of the entire, $8.5 billion fund.

Other features are more controversial. We have raised the oil taxes in Superfund by more than a factor of 10: From $200 million to $2.75 billion over 5 years. That is a big hit on an industry that has serious problems in today's energy market. It is also far out of proportion to any reasonable estimate of the contribution oil makes to the hazardous waste problem.

Mr. President, we have no waste-end tax in this bill. No one likes the waste-end tax, because it can be complex and because it hits a lot of people who already are paying Superfund tax. But at least a waste tax is related to the problem at hand; the generation of wastes that are hazardous to the health and safety of our citizens. A waste-generation tax is preferred by President Reagan, and it is the approach I preferred in 1984 when I chaired the Finance Committee. I would still prefer it, despite all its drawbacks, rather than hit oil as hard as we do in this bill.

Finally, we have agreed to a new formulation of a broad-based tax. This time, we piggyback on the new corporate minimum tax included in the tax reform bill, and raise $2.5 billion over the next 5 years. This is not nearly as bad as the excise tax, really a vat, which we agreed to in the Senate bill. A corporate minimum tax doesn't create a whole new, hidden tax base, and it is more likely to be kept under control in the years ahead. But it has nothing to do with the idea of making polluters pay, and I continue to oppose it as a matter of principle.

Nevertheless, Mr. President, I have agreed to this funding scheme. I think it is a bad scheme, but it appears to be the best we can do for the foreseeable future. We do need to show our commitment to cleaning up hazardous wastes, and to providing the resources the Superfund needs to address the problem.

President Reagan prefers a $5.3 billion bill, with no broad-based tax. That is my view as well, and last year I opposed the Senate bill because it was too big and because it contained a vat. At this late date I think we need to get this bill behind us, and see what the President will do.

I certainly commend all parties. I have signed the conference report. I am a little concerned about the funding. We are making a big hit on a crippled industry, the oil industry. Also, other features are controversial. My own view is that we should have had a waste-end tax. We have agreed to a new formulation of a broad-based tax. This time we piggybacked the new corporate minimum tax in the tax reform bill and will raise about $2.5 billion in the next 5 years. It is not as bad as the excise tax which we agreed to in the Senate bill but I do suggest that it is controversial and may have some trouble at the White House. I hope the President and his advisers will study the bill carefully. I hope it will be signed, not vetoed.

ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, is there any chance we could vote on this conference report immediately?

Mr. DOLE. We are prepared to go forward on the continuing resolution. We have reached an agreement on the Philippines amendment. It will be a bipartisan leadership amendment. There will be virtually no debate. There will be an immediate rollcall. Senator MELCHER has been taken care of in the language which will not require a rollcall. There will be a rollcall vote on final passage.

The PRESIDING OFFICER. The vote on this conference report will

occur after the rollcall vote on the continuing resolution.

□ 1640

Mr. DOLE. Mr. President, all we are waiting for is the staff on each side to complete some minor changes in drafting on the so-called Philippine resolution.

While we are waiting for copies, which will be here in just 1 minute, let me say this.

GOLDEN GAVEL AWARD

Mr. DOLE. Mr. President, at 4:45 p.m., in another 5 minutes, the designated occupant of the chair, Senator PAUL TRIBLE of Virginia, will have presided over the Senate for 100 hours. He will be awarded the Golden Gavel for his dedication in presiding over the Senate. I certainly want to extend my personal congratulations and to thank the distinguished Senator [Mr. TRIBLE] for his effort on behalf of all Senators.

[Applause.]

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. Yes, Mr. President, I yield.

Mr. BYRD. Mr. President, I associate myself with the remarks of the distinguished majority leader anent the Golden Gavel Award. This is an award that has been presented for several years to Senators who, having sat in the chair and presided over the Senate for a total of 100 hours, qualified for that award. It should be made clear that the award is not actually made in gold. Nevertheless, the terminology, I think, is quite appropriate.

Let me add just one thing. I have personally watched Senators as they have presided over the Senate over the years. I want to say that I went to the distinguished Senator from Virginia today, and I told him that I thought he was, in my judgment, one of the better presiding officers in the Senate. I said that having noted his work carefully. I think I should say it publicly.

If it is any encouragement to him, I am happy about it. It will be an encouragement to others to know they are being watched by Senators as well as by political science students, by professors, by teachers, by jurists, and by State legislators among the populace out there, in TV and radioland. It is important that they see a Senate that is presided over with dignity and with care. I think that it reflects well on the Senate.

I thank the distinguished majority leader for yielding.

The PRESIDING OFFICER. The Presiding Officer, in his capacity as the Senator from Virginia, thanks both the distinguished majority leader and the distinguished minority leader for their very kind comments.

Mr. BYRD. May I say I do not have the occasion to make these compliments often enough.

Mr. DOLE. I thank the distinguished minority leader and again congratulate the distinguished Senator from Virginia.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3203

(Purpose: To provide $200 million in aid for the Philippines)

Mr. DOLE. Mr. President, I believe we have reached an agreement to offer one amendment on the Philippines that has broad bipartisan support. I am going to send it to the desk on behalf of myself and Senators BYRD, LUGAR, PELL, EVANS, KERRY, DODD, INOUYE, KENNEDY, BRADLEY, THURMOND, DOMENICI, CRANSTON, MOYNIHAN and KASSEBAUM. It will be available for others who wish to cosponsor the amendment. I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Montana will be set aside. The clerk will state the amendment.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE] for himself and Mr. BYRD, Mr. LUGAR, Mr. PELL, Mr. EVANS, Mr. KERRY, Mr. DODD, Mr. INOUYE, Mr. KENNEDY, Mr. BRADLEY, Mr. THURMOND, Mr. DOMENICI, Mr. CRANSTON, Mr. MOYNIHAN, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. DIXON, Mr. TRIBLE, Mr. MATSUNAGA, Mr. ROTH, and Mr. GORTON proposes an amendment numbered 3203.

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

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

The amendment is as follows:

At the end of the joint resolution add the following new section:

SEC. . (a) notwithstanding any other provision of law, in addition to amounts otherwise made available by this joint resolution for the Philippines, the President shall make available $200,000,000 of funds appropriated by this joint resolution for economic assistance to the Philippines. Funds made available by this subsection shall be transferred from accounts contained within budget function 150.

(b) The amounts of funds transferred from any program, project or activity pursuant to subsection (a) shall not exceed 3% of the amounts appropriated or otherwise made available by this joint resolution for such program, project or activity.

(c) Funds transferred for purposes of subsection (a) may only be transferred: (1) from accounts within the jurisdiction of the same subcommittee of the Appropriations Committee of the Senate; and (2) to an account with an outlay rate no greater than the account from which the funds were transferred.

(d) Thirty days prior to the provision of any assistance under this section the President shall transmit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives a report setting forth the assistance to be provided, the specific accounts from which such assistance is to be provided and the amounts to be provided from each account.

Mr. DOLE. Mr. President, let me say very quickly because we are trying to cooperate with many of our colleagues here, I believe we have finally reached an agreement which most of us will be able to support on aid to the Philippines. I cite Senator EVAN's lead role on this side.

Basically, this package will give the President authorization to take $200 million from the so-called 150 account—the account covering state, aid, and related activities—but no more than 3 percent from any program, project, or activity.

It seems to me there are four benefits which we will get form this compromise and from the debate and votes which led up to it.

First, I have expressed my concerns, and a number of my colleagues have joined in, about the bases issue. It seems clear to me—more important, I hope it is clear in Manila—that our debate, and the two votes we have had rejecting the earlier packages, in important measure reflects the fact that the Senate places extremely high priority on the bases issue and is disturbed by some of the things we have seen and heard recently from the Philippine side. A warning shot has been fired across the bow. I trust it has been noted, and I hope it will be heeded.

Second, what we have done is light years ahead of what the House did on this issue in terms of responsibility and budget-consciousness. The House just wrote out a check against Uncle Sam's fiscal year 1986 account and tossed it onto the huge deficit pile—another IOU for our children and there children to take care of someday. We had a great deal of trouble finding the money for this aid, but finally we did, in a way that is not new spending and is not going to increase our deficit.

Third, by our debate and votes, we made a very useful record about what the Senate's priorities really are. We turned off attempts to scuttle Contra aid, in the guise of helping the Philippines. We made it crystal clear that for many of us—I think a majority—the aid we provide to Central America, where the people are struggling to build democracy and where a Moscow-inspired insurgency is trying to tear it down, is of just as high priority as the aid we provide the Philippines.

Finally, we did provide some aid, as a visible sign of our backing for President Aquino's efforts to build a democratic system in the Philippines. I might say that, having raised some questions about Philippine policies in recent days, I also do want to applaud the firmness the Aquino government is showing in the case of the Communist military commander recently captured there.

In sum, this is a pretty good package, a reasonable compromise and one which I hope will receive wide support.

What we suggested after some discussion may not satisfy the President, the executive branch, the Department of State, and some in this body, but we have been, in effect, jockeying around here all week trying to find a formula that would satisfy everyone. The result was that a couple of times, we did not satisfy anyone. I believe we have now been able to come up with a formula. I thank all Senators for their efforts.

There is no earmarking. This is up to 3 percent, not more than 3 percent of any function in 150. I believe it satisfies the concerns of many who have spoken on this floor. I hope they will indicate, as the distinguished minority leader said yesterday, that this is a bipartisan effort; we just had differences of opinion as to how we should fund this program.

I hope there will be a near unanimous-consent vote on this amendment.

Mr. BYRD. Mr. President, I ask unanimous consent that the names of Mr. INOUYE and Mr. KENNEDY be added as cosponsors.

Mr. DOLE. And Senator KASSEBAUM, too.

Mr. BYRD. And Mrs. KASSEBAUM.

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

AID TO THE PHILIPPINES

Mr. BYRD. Mr. President, I am pleased to join the distinguished majority leader, and the distinguished chairman and ranking Democrat of the Foreign Relations Committee, as well as the distinguished Senator from Massachusetts, [Mr. KERRY] and the distinguished Senator from Washington [Mr. EVANS] in this message of support from this body to the Government of the Philippines led by President Corazon Aquino.

This amendment puts our money where our resolutions of support are. It is very similar to the one that I offered on last Monday, to redirect $200 million in economic support to the Philippines from activities in budget function 150, international affairs.

I am pleased to be able to participate in this tangible support for the new democracy of the Philippines, which so brilliantly burst upon the world stage in February of this year. It is a fragile democracy, long in tradition, but today just reborn after a dark period. It will take our sustained support and attention for years, to nurture it, to build on this beginning, reforge our common alliance, and renew our bonds with the Filipino people.

I congratulate the other Senators who have worked long and hard over these last few days, to find a formulation which is within our severe budget constraints, but provides what is needed. The inspired leadership of President Aquino is to be commended, and today a positive, direct message of support will go from Washington to Manila—with our good wishes, our hopes and our promise to help.

I remind my colleagues that this is an investment in ourselves, our far-flung interests in the Pacific region, our national security. What is unique and what makes this action so gratifying is that, at the same time it strengthens the principles of democracy that we share with the Filipino people, and so it is a marriage of many positive factors.

I ask for the strong support of the Senate for this amendment.

Mr. DOLE. Mr. President, let me ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. DOLE. I thank the distinguished chairman of the Foreign Relations Committee, Mr. LUGAR and his staff and Senator EVANS and his staff and also the distinguished Senator from Maryland [Mr. SARBANES].

□ 1650

Mr. BYRD. I wish to also add my compliments to the chairman and ranking member of the Foreign Relations Committee.

Mr. DOLE. If we can expedite the process, it will be helpful.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington [Mr. EVANS].

Mr. President, I do extend my thanks to my colleagues who have all worked so hard and so carefully to find an appropriate solution to what is, indeed, a difficult problem. Let me only add that the account from which this money will come is desperately short. The foreign operations account has been hit harder under the current appropriations bill in front of us than any other account in Government.

American interests abroad require more than we are now giving. I hope that the administration, early next week if possible, sends us a supplemental appropriation for this funding. It would be most helpful if they could tell us if they have a better source for the $200 million, which would relieve some of the pressures on an already pretty-depleted account. If they would do that we would gain, first, by the passage of an alternative that might even be better than this one, but, if not, at least the conference committee would have available to it some ideas from the administration as to an account that might relieve the pressures on this very, very important piece of our appropriations bill.

I appreciate as much as any Senator here today the argument for fiscal responsibility which inevitably arises in any request for an amount as large as we are proposing for the Philippines. I am certainly and painfully aware of how woefully inadequate our foreign assistance budget is to meet the many demands placed upon it.

During the course of this week, we explored every conceivable source of additional funds for the Philippines. Senator LUGAR and others have spoken eloquently of their hesitation in taking funds from foreign assistance because these funds are so dreadfully low already. Any further reduction in these accounts runs the real danger of seriously undermining our security and foreign policy interests around the world.

Unfortunately, the recommendation of the Foreign Operations Appropriations Subcommittee reduces the foreign assistance accounts more drastically than any other appropriations bill in the continuing resolution. It is well below last year's postsequestration level and more than 27 percent below the President's request in outlays and some 16 percent under in budget authority. How many other appropriations accounts can claim such a contribution to reducing the deficit level? And, the levels on the House side are even more austere. This is why we have reluctantly sought funds from other sources.

This terrible dilemma has been addressed repeatedly and I need not repeat the arguments. I will say only that it is a dilemma which we will have to eventually solve if our global security interests are not to be eroded dangerously year after year. Failure to understand the ultimate result of continued slashing of foreign assistance will lead to political and strategic crises which will be infinitely more costly in both dollars and blood.

Whatever the sources for this additional assistance, I am convinced that the main argument in favor of this effort must rest upon the overriding importance of the American responsibility to assist Philippine democracy in its time of extreme need.

This proposal is in keeping with the fundamental political objective of demonstrating clearly the United States' intention to help the Philippines survive the present multitude of problems facing it. Let me put it bluntly: The survival of an economically viable, politically stable Philippines is in the national interest of the United States. If democracy were to perish in

the Philippines, not only would the Filipino people suffer, it would be a grievous blow to American strategic interests in Asia and the Pacific.

I do not advocate this grant of assistance as simply a gesture of courtesy to President Aquino for a "successful and charming" visit to the United States.

Yes, she proved herself a dynamic, forceful and attractive leader of her country.

Yes; she gained millions of American friends for a country with which the United States has the deepest and historically intertwined relationship of any country in Asia.

Yes; she made her case eloquently that the survival of Philippine democracy is at stake over the next months and years in that country.

But what is fundamentally at issue—and let me put this point clearly up front—is the national interest of the United States. If the United States wants to enhance its security interests in the Pacific, it should do everything possible to ensure the survival of Philippine democracy. If we want to have continued access to our military facilities, then we should do everything necessary to help the Philippine economy stabilize and prosper.

The surest way to have communism triumph in the Philippines is to engage in a wait-and-see attitude toward the heroic efforts of the new Aquino government, to wait until we are sure they will succeed. The Aquino government needs more help now.

As President Aquino stressed, communism cannot be defeated by sheer military power. The poverty must be alleviated if the cause of unrest and rebellion among the people of the Philippines is to be removed.

If the United States cannot help democracy survive in the Philippines where all conditions are favorable, how can we be expected to win a battle for democracy anywhere else in the world? Is there a better country to invest in democracy and freedom?

If there is one developing country in the world with which the United States has a deep kinship of shared values and historical experience, if there is one developing country where democracy should succeed, it is the Philippines. Let us stay the course in our close relationship with the Philippines.

Mr. KENNEDY. Mr. President, I am pleased to join in sponsoring this amendment appropriating $200 million in aid to the Philippines. I commend my colleagues for working together in a bipartisan fashion to find an acceptable way to provide this much-needed assistance to the world's newest democracy.

President Aquino has now returned to her country after an extraordinary 9-day visit to the United States. Never before in the history of this Nation have the American people demonstrated such an outpouring of support for a visiting foreign leader. Their enthusiasm was visible everywhere, in the large crowds, in the press, in the sea of yellow which broke out across this country and in the statements of our Nation's leaders.

At the conclusion of his meeting with President Aquino, President Reagan declared he was "bullish on the Philippines" and promised to "do all that we can" to make her government successful. After her moving and impressive speech before Congress, Speaker TIP O'NEILL declared, "That's the finest speech I've heard in my 34 years in Congress," and Majority Leader BOB DOLE declared President Aquino had "hit a home run." In her address to the Congress, President Aquino demonstrated that she is a tough, dedicated leader who clearly understands the complex and difficult issues facing her country. The House of Representatives has moved to support President Aquino and it is time the Senate did likewise.

The path of liberty is never easy. But the American and Philippine people have a long history of joint dedication to the cause of justice, freedom and democracy. Our two peoples fought side by side for our fundamental freedoms a generation ago in World War II—and we must not lose the fight for those freedoms in our own generation.

Millions—even billions—of peoples in other lands live under tyranny and repression in the world today—and they have never known the blessings of democracy. But the Philippine people have. They know what it means to vote in free elections, to live in freedom, to have a freely chosen government, to have a President who shares their cause.

We in America watched in awe as Cory Aquino took up the cause of freedom for which her husband Ninoy died and rallied her people against the tyranny and oppression of the Marcos regime. We watched with astonishment as those ripples of freedom in the Philippines spread from brother to brother, sister to sister, friend to friend, island to island. And we watched in admiration as the tide of people power swept Marcos from office and Cory to the Presidency.

But the time has come for the United States to act. The Philippines must now begin the long and difficult task of rebuilding a country ravaged for two decades by Marcos, Imelda, and their cronies. The Philippine economy is in shambles and still contracting. The heavy debt burden of $26 billion absorbs $2 billion a year in debt service alone—one half of the country's export revenues. The infighting within the government continues and a Moslem leader has declared a provisional government. The Communist insurgency remains a substantial threat to the security and stability of not only the Philippines but also the important United States bases in that country.

The United States is committed to preserving and promoting democracy throughout the world; President Aquino and the Philippine people have achieved an unprecedented, extraordinary democratic victory. They deserve our support, they need our support and it is in our interest to provide them support.

The American people gave President Aquino the warmest welcome ever provided a visiting head of state. I urge my colleagues to reflect their wishes and take action quickly to approve the aid package to the people of the Philippines.

Mr. MURKOWSKI. I'm pleased to cosponsor this amendment, to provide $200 million in economic aid to the Philippines from the foreign affairs budget.

This appropriation will give needed economic support to the new Aquino government.

As I noted when President Aquino visited the capital recently, the Philippines must overcome the serious economic, political, and security problems inherited from the Marcos regime.

This amendment is appropriate: The $200 million comes out of the right budget category: foreign affairs; the fiscal year 1987 budget for the foreign affairs function is about $13 billion—about $2 billion less than the administration requested, but the impact of the $200 million to the Philippines will be spread around. The amendment only permits $50 million to be taken from the economic support fund or ESF budget. As we debated the other day, we do not want to take ESF funds from our allies who are also struggling to maintain their economic and democratic foundations. This amendment will not unduly burden our friends because it requires that most of the Philippine aid be taken from other parts of the foreign affairs budget. Because the ESF budget is about $3.8 billion, I believe that giving $50 million of that to the Philippines is a reasonable approach. We'll pick up the other $150 million from other parts of the foreign affairs budget.

Mr. President, as chairman of the Far East Asian and Pacific Subcommittee of the Foreign Relations Committee, I am pleased to support this amendment. I went to the Philippines to witness the February 7 election. I saw firsthand the hopes of the Filipino people, the hope that democracy would return to that wonderful land. I saw the Filipino people express their hope for democracy by taking action—peaceful action that resulted in the Presidency of a remarkable Filipino, Corazon Aquino.

Now, Mr. President, we can continue our support of the Filipino people without unduly taking funds away from our other allies.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY].

Mr. KERRY. Mr. President, I will not make lengthy comments either.

Mr. President, the Senate has now twice defeated efforts to provide $200 million in additional economic assistance to the Philippines. Yet, these actions earlier this week are not indicative of the strong support the Government of President Corazon Aquino enjoys in the Senate of the United States, as we are about to demonstrate with this bipartisan compromise.

I think it is important to point out that this bipartisan compromise stipulates that $200 million in additional economic assistance will be made available to the Philippines during fiscal year 1987. Every account in function 150 will share an equal burden in providing these additional resources to the Philippines. By reaching this agreement, we are sending a signal that the Philippines is the single, most important foreign policy issue for the United States—so much so that everyone has been asked to give up something in order that we can send this signal to the Philippines.

Had we done otherwise, the Communist Party of the Philippines stood to be the only beneficiary of our failure to approve this assistance. We are now saying that Corazon Aquino and the future of democracy in the Philippines are indivisible. We are saying that we will stand shoulder to shoulder with the people of the Philippines in their hour of greatest need to insure that their aspirations are realized. Finally, we are saying that the security interest of the United States in the world are best served by allies which are stable democracies.

It is important to place in proper perspective the importance of the government of President Aquino to the United States. I would like to quote from a letter written September 25 of this year by Alex A. Esclamado, the publisher and editor-in-chief of the Philippines News, the largest Filipino-American newspaper in the United States. Mr. Esclamado pointed out the following:

> What is imperative now is to help President Aquino succeed in preserving democracy in the Philippines. The greatest threat to our military bases are the Communists, and the Communists will ultimately win in the Philippines if America will, once again, at this very crucial period, show lack of support for the forces of democracy now in place in the Philippines.
>
> The Communists will not accept a peaceful solution unless the U.S. shows its strong support of the Aquino government by giving her the financial support she urgently needs to make her program of democracy work.

Mr. President, this Chamber has been the scene for many divisive foreign policy debates throughout our great history as a nation. Oftentimes, these debates have been filled with emotion and recrimination as was the case with China and the Vietnam war. Who lost China and who lost Vietnam has reverberated around these four walls. Yet, never has history presented us with a choice so clear as in the case of the Philippines.

Rarely have we been confronted with a decision that is so clear in its implications. The peaceful, democratic revolution which occurred in the Philippines this past February represents an opportunity that history rarely affords a nation—the opportunity to start anew.

There isn't anybody in this Chamber who understands the stakes better than the chairman of my committee. Oftentimes, I find myself in disagreement with my chairman. But not on this issue. Senator LUGAR has devoted considerable time and energy to the Philippines issue. Our committee has worked strenously under his leadership to force a bipartisan consensus on one of the most critical foreign policy issues ever faced by the U.S. Congress. He not only deserves our admiration and credit for his commitment to democracy in the Philippines, he deserves the respect of our colleagues from both sides of the aisle. If he says this $200 million is critical to contributing to an outcome in the Philippines that is in the best interest of both our peoples then we should follow his lead. There should not be any question about his knowledge as to what is required to promote the interests of the United States in the Philippines.

I am also concerned over the distrust which has surfaced among some of my colleagues for the democratic processes in the Philippines. We have much ground to recoup from our 14-year support of the Marcos dictatorship—a dictatorship that crushed democratic institutions underfoot and which engaged in an unprecedented rape of the economy of that nation.

We have to understand the scars left by the tragic period in Filipino history and the role the United States played through our support of the Marcos period. In the September 16-30 publication of Philippine American News there appeared an editorial which noted that President Reagan was lucky that:

> The way things have been over 20 years of Marcos, a major political disaster seemed certain. We may not be so lucky next time.
>
> The defect in the relationship that has steadily sapped the reservoir of goodwill that Filipinos have for their former colonial masters and comrades-in-arms lies in the narrow and one-dimensional view on which the U.S. has based its Philippine policy. That sole overriding concern has been and continues to be the maintenance of its military bases.
>
> This outlook has led the U.S. into condoning actions that violated even basic American values such as respect for human life. Since the Marcos dictatorship was not seen as a threat to U.S. interests, but actually served to promote them, Washington decided to look the other way from the blatant corruption and unparalleled abuse.

The editorial writer then went on to offer some wise advice that I think is worth our heeding.

> The first step toward a desirable state of Philippine-American relations calls not so much for charity as it does consistency. The freedom that Americans practice at home, their government must learn to respect abroad. The U.S. must allow that the Philippine government has the capacity to determine the necessary measures that will enhance its national security and well-being. With particular regard to the military bases, this means that the U.S. must not engender a political atmosphere wherein Filipino leaders must compete as to who would promise to deliver the most acceptable level of comfort to the Americans. Such a situation is now being astutely exploited by the Defense Minister, which has served as a destabilizing influence that can be harmful to the long-term prospects of the relationship.

The editorial concluded with the following observation:

> The fact that both the Philippines and the U.S. got over the Marcos crisis in better shape than optimistic expectations makes this visit a unique chance to chart a new direction in what will continue to be a mutually important relationship. Both must be willing and equal partners. For the Philippines, nothing more is sought, but nothing less will suffice.

Mr. President, I think this editorial says it all. Democracies are indeed different from their adversaries on the right and left. We supposedly share common values which allow us to pursue common goals as equals—as partners if you will. To treat friends and allies as equals and with respect demonstrates our strength.

Let it be said that the only superpower which runs roughshod over its allies is the Soviet Union, not the United States. That is a sign of weakness. Let us not fear the democratic processes in the Philippines. Let us welcome it with open arms and give thanks that we have a second chance.

I join my colleague, the distinguished Senator from Washington, in his feelings about hoping that a better source of funding can be forthcoming, but I do thank the distinguished majority leader, the minority leader, the chairman and the ranking member of the Foreign Relations Committee and my colleagues, particularly the Senator from Washington for his and their continual efforts this week to find a source of funding. While we had two votes and while we had news media stories that characterized an unwillingness of the Senate to try to assist the Philippines, I am delighted that in a bipartisan fashion, as we always felt,

we are now moving to send the proper message. I think it is a good piece of work and an appropriate one by the Senate. I am delighted that we are joining in it.

The PRESIDING OFFICER. Is there further debate?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island [Mr. PELL].

Mr. PELL. Mr. President, I wish to add my own words of congratulation to all those who participated in the amendment in a bipartisan way. We had very different viewpoints in the beginning, but we ended up with a common viewpoint.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland [Mr. SARBANES]

Mr. SARBANES. Mr. President, we should not lose sight of the most important message this amendment sends, and that is the very strong bipartisan support which exists in the Senate of the United States for the democratic efforts now underway in the Philippines. It was brought about through the cooperative efforts of many people and those need to be recognized, but above it is the very clear message we are sending to the Philippines that the United States is standing beside them now in this moment of trial. We want this democratic regime in the Philippines to succeed, and this is a clear indication of that strong support.

The PRESIDING OFFICER. Is there further debate? If not, the question comes on the bipartisan amendment on the Philippines. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

The PRESIDING OFFICER (Mr. COCHRAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 82, nays 14, as follows:

[Rollcall Vote No. 328 Leg.]

YEAS—82

Andrews	Chafee	Domenici
Armstrong	Chiles	Durenberger
Baucus	Cochran	Eagleton
Bentsen	Cohen	Evans
Bingaman	Cranston	Exon
Boren	D'Amato	Ford
Bradley	Danforth	Glenn
Broyhill	Denton	Gore
Bumpers	Dixon	Gorton
Burdick	Dodd	Gramm
Byrd	Dole	Harkin
Hart	Long	Rockefeller
Hatch	Lugar	Roth
Hatfield	Matsunaga	Sarbanes
Hawkins	McClure	Sasser
Hecht	McConnell	Simon
Heinz	Melcher	Simpson
Hollings	Metzenbaum	Stafford
Inouye	Mitchell	Stennis
Johnston	Moynihan	Stevens
Kassebaum	Murkowski	Symms
Kasten	Nunn	Thurmond
Kennedy	Packwood	Trible
Kerry	Pell	Warner
Lautenberg	Proxmire	Weicker
Laxalt	Pryor	Wilson
Leahy	Quayle	
Levin	Riegle	

NAYS—14

Abdnor	Helms	Rudman
Boschwitz	Humphrey	Specter
DeConcini	Mattingly	Wallop
Grassley	Nickles	Zorinsky
Heflin	Pressler	

NOT VOTING—4

Biden	Goldwater
Garn	Mathias

So the amendment (No. 3203) was agreed to.

□ 1710

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the motion to reconsider——

Mr. DOLE. 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. DOLE. 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. BYRD. May we have order?

The PRESIDING OFFICER. Will the Senate please be in order? Senators please take their seats. The Senate will be in order.

The majority leader.

Mr. DOLE. Mr. President, I was asked by the distinguished minority leader about the program for the remainder of the day and also what we might expect the early part of next week.

Mr. BYRD. Mr. President, may we have order in the Senate because this is an important announcement to all Senators.

The PRESIDING OFFICER. The Senate will please be in order. Senators will please take their seats and cease conversation. The Senate will be in order.

The majority leader.

AGENDA

Mr. DOLE. Mr. President, first let me indicate that we are waiting for the amendment by Senator MELCHER to be modified if that can be done and that can be accepted. They are meeting now with the USDA officials right off the floor. It is my hope that will be finished momentarily and then there will be one final amendment on drug funding and then final passage, and then passage of the Superfund conference report.

But we would do in the wrapup the Export-Import Bank conference report, technology transfer, and the handicapped bill in wrapup.

On Monday, we will do S. 2702, come in about noon, FIFRA, there is one vote expected, S. 2045, CFTC, hopefully by unanimous consent, but if not there could be a vote on that.

We will dispose of Superfund. There will be additional conference reports on intelligence authorization and bankruptcy plus the Executive Calendar and any other matters that might come to us, conference reports.

On Tuesday morning at 9 o'clock we hope to begin the impeachment trial of Judge Claiborne. We hope to be at that for 4 hours on Tuesday, and then Tuesday afternoon we will do other Senate business, and then hopefully conclude the action on the Claiborne matter on Wednesday of next week. That should not take the entire day. Then hopefully the remainder of the day on Wednesday we would be waiting the CR conference report, the debt limit conference report, reconciliation, the highway bill conference report and maybe other conference reports and hopefully conclude our business no later than Thursday of next week.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

I believe it is very important that we all as Senators understand the importance of good attendance on the floor during the trial of the impeachment of Judge Claiborne.

I know there are some Senators who may be under the impressions that it will not be necessary for them to be in attendance.

I think at the very least we have to maintain a quorum on the floor at all times during the trial. We should be certain that the proceedings are not delayed or interrupted by quorum calls, thereby both detracting from the serious nature of the trial and delaying our sine die adjourment.

I will continue to emphasize this to my colleagues on this side of the aisle, and I urge all of our colleagues while we have good attendance here on the floor to attend this trial and be present on the floor.

It is a serious procedure. It is our constitutional responsibility as we all know, and for the reasons I have already stated I think it is imperative that we maintain a quorum here on this floor at all times during that trial.

Mr. BUMPERS. Mr. President, will the majority leader yield?

Mr. DOLE. First, let me indicate I certainly share the views just expressed by the distinguished minority leader. This is a serious matter. I am certain every Senator understands that and believes that and will demonstrate that over the next week.

So I would hope that when we begin our deliberations on Tuesday morning we will have a solid number of Senators here, well over a quorum, if possible.

Let me yield very quickly to the Senator from Arkansas.

□ 1720

Mr. BUMPERS. How many more rollcalls do you anticipate this evening?

Mr. DOLE. I anticipate, hopefully, only one on final passage and then one on the Superfund conference report.

Mr. ARMSTRONG. Will the Senator yield?

Mr. DOLE. I am happy to yield.

Mr. ARMSTRONG. I think I heard the leader refer to the Exim conference report. If that were to be called up tonight, it might lead to a rollcall. I am wondering if there is an urgency about it that it could not go over until Monday.

Mr. DOLE. I was advised by the Senator from Pennsylvania, Senator HEINZ, just a few minutes ago in my office that their authorization expires at midnight tonight. Otherwise, I had planned on bringing it up on Monday.

Mr. ARMSTRONG. Mr. President, I would urge the leader to do that. I have not had a chance to review it. It is not my desire to get an extra rollcall today, but there are matters that may be in that conference report that we have not had a chance to look at.

Mr. DOLE. Perhaps in the next few minutes we could discuss that with the Senator from Pennsylvania.

Mr. BYRD. Mr. President, would the distinguished majority leader consider going ahead with the vote on Superfund? There are some Senators who have plans to catch planes. Could we make that vote before they have to leave to catch a plane?

Mr. DOLE. If that is satisfactory with the manager of the bill. I need to check with Senator HATFIELD. I know they are still drafting on the Melcher amendment.

Mr. METZENBAUM. It is coming right in.

Mr. BYRD. That would save some time.

Mr. DOLE. Senator MELCHER is now here.

Mr. BYRD. You can go ahead with the Superfund and go ahead with the Superfund vote now.

Mr. DOLE. I understand that the manager has no problem as long as we understand that the Melcher amendment will be available immediately after the vote.

Mt. MELCHER. Immediately; and it is agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that, notwithstanding the previous order, we now vote on the Superfund conference report. The yeas and nays have been ordered.

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

Mr. DOLE. Fifteen minutes, flat.

VOTE—CONFERENCE REPORT ON H.R. 2005

The PRESIDING OFFICER. The question is on agreeing to the conference report. 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 Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 8, as follows:

[Rollcall Vote No. 329 Leg.]

YEAS—88

Abdnor	Glenn	Metzenbaum
Andrews	Gore	Mitchell
Armstrong	Gorton	Moynihan
Baucus	Grassley	Murkowski
Bentsen	Harkin	Nunn
Bingaman	Hart	Packwood
Boschwitz	Hatch	Pell
Bradley	Hatfield	Pressler
Broyhill	Hawkins	Proxmire
Bumpers	Hecht	Pryor
Burdick	Heflin	Quayle
Byrd	Heinz	Riegle
Chafee	Hollings	Rockefeller
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Warner
Eagleton	Matsunaga	Weicker
Evans	Mattingly	Wilson
Exon	McConnell	
Ford	Melcher	

NAYS—8

Boren	McClure	Wallop
Gramm	Nickles	Zorinsky
Helms	Symms	

NOT VOTING—4

Biden	Goldwater
Garn	Mathias

So the conference report on H.R. 2005 was agreed to.

□ 1740

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the yeas and nays ordered on the motion to reconsider be vitiated.

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

Mr. DOLE. And that the motion to reconsider be withdrawn.

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

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

AMENDMENT NO. 3193, AS MODIFIED

(Purpose: To express the sense of the Senate that the Secretary of Agriculture should use existing stocks of wheat and corn to increase domestic commodity assistance; to dispose of surplus agricultural commodities to the Philippines, certain African nations, India, and Bangladesh, and for other purposes)

Mr. MELCHER. Mr. President, I send a modification of my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the modification.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER) proposes an amendment numbered 3193, as modified.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. 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 resolution, add the following new sections:

SEC. . It is the sense of the Senate that the Secretary of Agriculture should make available not less than $10,000,000 worth of flour and cornmeal using the wheat and corn stocks of the Commodity Credit Corporation. Such flour and cornmeal shall be in addition to the traditional level of assistance made available under section 1114 of the Agriculture and Food Act of 1981, section 416(a) of the Agricultural Act of 1949, section 4 of the Agriculture and Consumer Protection Act of 1973, and any other provision of law administered by the Secretary.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to PVO's and cooperatives operating in the Republic of the Philippines and to the Government of the Philippines a total of at least 500,000 metric tons of wheat, 500,000 metric tons of soybeans, and 50 million pounds of dairy

products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(c) Commodities made available under this section during any fiscal year shall be subject to the agreement of the Republic of the Philippines—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the three preceding years.

(2) to permit the sale of commodities furnished under this section in the Republic of the Philippines and to use the local currency generated from such sales (A) by PVO's and cooperatives to carry out approved programs of assistance in the Republic of the Philippines (B) to operate lending programs in the manner provided for in section 108 of Public Law 480, and (C) to reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, during the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under this paragraph if they are used to pay expenses of the United States in the Philippines.

(d) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Philippines and friendly countries of Africa, under paragraph (b)(11)(A) of section 416 of the Agricultural Act of 1949, at least 500,000 metric tons of wheat and 45 million pounds of dairy products (of which at least 40 million pounds shall be nonfat dried milk, 30 million pounds shall be cheese, and 20 million pounds shall be butter), notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the acreage amount of such agricultural commodities acquired through commercial arrangements during the preceding three years;

(2) to sell any commodities furnished under this section within the nation and to use local currencies generated from such sales to (A) establish and carry out lending programs in such nations in the manner provided for in section 108 of the Agricultural Trade Development and Assistance Act of 1953 and (B) reimburse the United States in dollars for cost incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

No greater than such amounts as is requested by such governments.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agriculture Trade Development and Assistance Act of 1954.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to—

(1) Nigeria, 400,000 metric tons of wheat, 80 million pounds of dairy products, and 150,000 metric tons of soybeans;

(2) friendly countries in Africa, other than Nigeria, 1 million metric tons of wheat;

(3) India, 30,000 metric tons of soybeans and 50 million pounds of dairy products; and

(4) Bangladesh, 60,000 metric tons of wheat and 20 million pounds of dairy products

under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities be made available to a nation or PVO's and cooperatives operating in such nations under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 of the average amount of such agricultural commodities acquired through commercial arrangements during the preceding three years (in the case of Nigeria, in amount equal to the amount so acquired in the preceding year.

(2) to permit the sale of commodities furnished under this section within the nation and to use the local currencies generated from such sales (A) by PVO's and cooperatives to carry out approved programs of assistance in the country and (B) to operate lending programs in the manner provided for in section 108 of Public Law 480, and to reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

No greater than such amounts as is requested by such governments

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

Mr. MELCHER. Mr. President, the amendment is so modified now that it is acceptable to both sides. We have arrived at an agreement where in most instances, but not all, we have cut the amount of the available surplus commodities to foreign governments by about one-half. In one or two instances, it has been more than one-half, and in some instances it was less than one-half.

Mr. President, the part of the amendment that dealt with feeding programs, commodity programs, for the poor here in this country remains the same.

I hope the Senate will accept the modification, the amendment so modified, unanimously.

Mr. DOLE. Mr. President, so far as I know, there has been an agreement. I know there are still some differences. The Department of Agriculture has some differences. Perhaps they can be resolved to the satisfaction of both USDA and the Senator from Montana in conference.

We are prepared to accept the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment, as modified.

The amendment (No. 3193), as modified, was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there any further amendments to the continuing resolution?

AMENDMENT NO. 3204

Mr. JOHNSTON. 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 Louisiana [Mr. JOHNSTON], for himself, Mr. HATFIELD, Mr. STENNIS, Mr. STEVENS, Mr. BYRD, Mr. WEICKER, Mr. INOUYE, Mr. MCCLURE, Mr. HOLLINGS, Mr. LAXALT, Mr. COCHRAN, Mr. BURDICK, Mr. ANDREWS, Mr. LEAHY, Mr. ABDNOR, Mr. DECONCINI, Mr. KASTEN, Mr. BUMPERS, Mr. D'AMATO, Mr. LAUTENBERG, Mr. MATTINGLY, Mr. RUDMAN, Mr. SPECTER, Mr. DOMENICI, Mr. CHILES, Mr. SASSER, and Mr. HARKIN, proposes an amendment numbered 3204.

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

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

The amendment is as follows:

On page 74 after line 10, add the following:

TITLE II.—OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

CHAPTER I.—DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount for "Salaries and expenses, United States attorneys", $6,000,000.

SUPPORT OF UNITED STATES PRISONERS

For an additional amount for support of United States prisoners in non-Federal institutions, $2,000,000.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524, as amended by the Comprehensive Forfeiture Act of 1984 and the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, such sums as may be necessary to be derived from the Department of Justice Assets Forfeiture Fund.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $4,000,000.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $18,000,000.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $28,000,000.

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and facilities", $50,000,000, to remain available until expended.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For an additional amount for "Justice assistance", $117,000,000, to remain available until expended, for grants for drug law enforcement programs, to be used only to carry out provisions of section 1302 (1), (2), (3), (5), and (6), of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by H.R. 5484, as passed in the Senate on September 30, 1986: *Provided*, That $2,000,000 shall be available only to carry out a pilot prison capacity program.

THE JUDICIARY COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

DEFENDER SERVICES

For an additional amount for "Defender services", $18,000,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For an additional amount for "Fees of jurors and commissioners", $7,500,000, to remain available until expended.

RELATED AGENCY

UNITED STATES INFORMATION AGENCY

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $2,000,000, to be available only for drug education programs abroad authorized in H.R. 5484 as passed in the Senate on September 30, 1986.

CHAPTER II.—FOREIGN ASSISTANCE

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

Education and human resources development, Development Assistance:

For an additional amount to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, $3,000,000: *Provided*, That these funds shall be used pursuant to section 126(b)(2) of the Foreign Assistance Act of 1961 for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

For an additional amount to carry out the provisions of section 481 of the Foreign Assistance Act of 1961, $55,000,000: *Provided*, That of this amount $45,000,000 shall be made available only in accordance with the provisions of section 2001(2) of H.R. 5484, as passed in the Senate on September 30, 1986: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

CHAPTER III DEPARTMENT OF INTERIOR

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for "Operation of Indian programs", $3,500,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

CONSTRUCTION

For an additional amount for "Construction", $15,000,000, to remain available until expended.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

NATIONAL FOREST SYSTEM

For an additional amount for "National forest system", $20,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH SERVICES AND RESOURCES ADMINISTRATION

INDIAN HEALTH SERVICES

For an additional amount for "Indian health services", $16,200,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

INDIAN HEALTH FACILITIES

For an additional amount for "Indian health facilities", $9,000,000, to remain available until expended.

CHAPTER IV DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT

For an additional amount for drug abuse prevention and treatment activities as authorized by title XIX of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, $236,000,000, of which $11,000,000 shall be transferred to the Administrator of Veterans Affairs to be used in accordance with section 1922 of the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986.

NATIONAL INSTITUTE FOR DRUG ABUSE

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $27,000,000.

NATIONAL INSTITUTE FOR ALCOHOL ABUSE AND ALCOHOLISM

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $3,000,000.

INFORMATION CLEARINGHOUSE AND EVALUATION STUDIES

For an additional amount for "Information clearinghouse and evaluation studies", $3,000,000.

DEPARTMENT OF EDUCATION

SPECIAL PROGRAMS

For an addditonal amount for "Special programs", $150,000,000, to remain available until September 30, 1988: *Provided*, That the remaining funds shall be distributed in accordance with subtitle B of the Anti-Drug Abuse Act of 1986.

RELATED AGENCY

ACTION

OPERATING EXPENSES

For an additional amount for public awareness and education as authorized by the Domestic Volunteer Service Act of 1973, part C of title I, as amended by the Anti-Drug Abuse Act of 1986, $3,000,000, of which $500,000 shall be available for administration, as authorized in title IV of the Domestic Volunteer Service Act of 1973, as amended.

CHAPTER V DEPARTMENT OF TRANSPORTATION

COAST GUARD

OPERATING EXPENSES

For an additional amount for "Operating expenses", $39,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction, and improvements", $119,000,000, to remain available until September 30, 1991, of which not to exceed $5,000,000, may be expended for design and engineering work in relation to construction of a docking facility in the Bahamas.

FEDERAL HIGHWAY ADMINISTRATION

MOTOR CARRIER SAFETY GRANTS

[Highway Trust Fund]

For an additional amount to carry out the provisions of section 402 of Public Law 97-424, $30,000,000, to be derived from the Highway Trust Fund, to remain available until September 30, 1989.

CHAPTER VI DEPARTMENT OF TREASURY

U.S. CUSTOMS SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $65,900,000.

OPERATION AND MAINTENANCE, AIR INTERDICTION PROGRAM

For an additional amount for "Operation and maintenance, Air Interdiction program", $85,000,000, of which up to $10,000,000 is available for the U.S.-Bahamas Task Force and $25,000,000 is available

for establishment of command, control, communications, and intelligence (C-3I) centers, to remain available until expended.

U.S. SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $5,000,000.

EXECUTIVE OFFICE OF THE PRESIDENT

WHITE HOUSE CONFERENCE ON DRUG ABUSE AND CONTROL

SALARIES AND EXPENSES

For necessary expenses of the White House Conference on Drug Abuse and Control, $2,000,000.

CHAPTER VII DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and maintenance, Air Force", $12,615,000.

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

For an additional amount for "Operation and maintenance, Defense agencies", $27,000,000.

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For an additional amount for "Aircraft procurement, Army", $22,500,000.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for "Aircraft procurement, Navy", $183,000,000.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for "Other procurement, Air Force", $117,000,000.

This title may be cited as the "Omnibus Drug Supplemental Appropriations Act of 1987".

Mr. JOHNSTON. Mr. President, this is the funding mechanism for the drug bill. It is a great disappointment, I am sure, to many of us, because the budget authority, $1.54 billion, and the outlays, $642 million, are not supported by any revenues but they are paid out of the deficit which one day this Congress may address, hopefully with the assistance and not the opposition of the President.

It is safe to say that for the time being that problem of the deficit is not being addressed, but we are at least, with this amendment, Mr. President, in a bipartisan way addressing the problem of drugs and providing funding for the problem of drugs.

So, Mr. President, I ask that the amendment be agreed to. I also ask unanimous consent that a statement be included in the RECORD at this point concerning title II, Omnibus Drug Supplemental Appropriations Act of 1987.

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

[Title II.—Omnibus Drug Supplemental Appropriations Act of 1987]

CHAPTER I.—DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

United States Attorneys

Funding of $6,000,000 is provided for the United States Attorneys for fiscal year 1987 for an additional 80 Assistant United States Attorneys and 40 additional support personnel to prosecute the drug law enforcement cases that will be generated as a result of the additional Federal investigative resources provided in this title.

SUPPORT OF UNITED STATES PRISONERS

Funding of $2,000,000 is provided for the support of United States prisoners in non-Federal institutions to meet the substantial increase in Federal prisoners and detainees anticipated due to the additional Federal investigative and prosecutive resources provided in this title.

ASSETS FORFEITURE FUND

Such sums as necessary are provided from the Department of Justice Assets Forfeiture Fund. This is the additional amount which the Department of Justice estimates will be needed to carry out the provisions of the Anti Drug Abuse Act of 1986.

FEDERAL BUREAU OF INVESTIGATION

Salaries and Expenses

Funding of $4,000,000 is provided for equipment to continue the fieldwide installation of digital voice privacy radios.

DRUG ENFORCEMENT ADMINISTRATION

Salaries and Expenses

Funding of $18,000,000 is provided for Salaries and Expenses. Of this amount 218 positions (140 agents) and $8,000,000 are for domestic field staff to combat the cocaine problem in areas which have experienced significant increases in cocaine trafficking; 52 positions (30 agents) and $3,000,000 are to enhance law enforcement and intelligence gathering capability in primary drug-producing countries in Latin America; and $7,000,000 for helicopters for drug eradication efforts in Hawaii.

FEDERAL PRISON SYSTEM

Salaries and Expenses

Funding of $28,000,000 is provided for the salaries and expenses appropriation of the Federal Prison System. Of this amount, $4,600,000 is designated for 250 additional correctional officer positions to handle the substantial increase in the number of inmates in Federal prisons expected as a result of the additional investigative and prosecutive resources provided in this resolution. The remaining $23,400,000 is for the care and custody costs associated with the increase in the number of inmates in Federal penal institutions.

BUILDINGS AND FACILITIES

Funding of $50,000,000 is provided for design and construction of one new Federal prison to relieve the severe overcrowding that exists in the Federal Prison System.

OFFICE OF JUSTICE PROGRAMS

Justice Assistance

Funding of $117,000,000 is provided for the Justice Assistance appropriation for grants for drug law enforcement programs. Of this amount, $2,000,000 is earmarked to carry out a Pilot Prison Capacity Program.

THE JUDICIARY

Courts of Appeals, District Courts, and other Judicial Services

Defender Services

Funding of $18,000,000 is provided for the operation of the Federal public defender and community defender organizations and the compensation, reimbursement and expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964, as amended. These resources are provided in anticipation of increased demands which will be placed upon this appropriation as a result of stepped up Federal investigative and prosecutive efforts during fiscal year 1987.

Fees of Jurors and Commissioners

Funding of $7,500,000 is provided for fiscal year 1987 for the compensation of jury commissioners and for the fees and allowances of grand and petit jurors anticipated to be required as a result of the additional Federal investigative and prosecutive resources that are provided in this title.

RELATED AGENCY—UNITED STATES INFORMATION AGENCY

Salaries and Expenses

Funding of $2,000,000 is provided for the United States Information Agency for drug education abroad.

CHAPTER II.—FOREIGN ASSISTANCE

BILATERAL ECONOMIC ASSISTANCE

Funds Appropriated to the President

Chapter II of this title provides funding for programs under the jurisdiction of the Agency for International Development and the Bureau for International Narcotics Control of the Department of State.

AGENCY FOR INTERNATIONAL DEVELOPMENT

For the Agency for International Development, $3,000,000 is provided for education and human resources development, Development Assistance, which is to be used for activities aimed at increasing the awareness of the effects of production and trafficking of illicit narcotics on those countries which are either the source of such illicit narcotics or countries which are used to transit illicit narcotics.

INTERNATIONAL NARCOTICS CONTROL

An additional $55,000,000 is provided for the State Department's International Narcotics Control Program which funds a variety of programs in source countries, including enforcement assistance, production control, crop substitution, and eradication programs. Of the amount provided under this chapter for International Narcotics Control $45,000,000 is reserved only for activities pursuant to section 2001(2) of H.R. 5484, as passed in the Senate on September 30, 1986. That section requires that a detailed plan for these funds be submitted to Congress, and also that of the $45,000,000, not less than $10,000,000 is available to provide helicopters or other aircraft to countries which receive assistance under the International Narcotics Control Program.

CHAPTER III.—DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Operation of Indian Programs

Funding of $3,000,000 is provided for training of law enforcement and tribal court officers and $500,000 is provided to the Papago Tribe control of illegal narcotics trafficking.

CONSTRUCTION

In the construction account, $5,000,000 is provided for the construction of youth shelters or half-way houses and $10,000,000 is provided for the renovation of juvenile detention facilities.

DEPARTMENT OF AGRICULTURE—FOREST SERVICE

National Forest System

Funding of $20,000,000 is provided for the Forest Service to hire additional law enforcement personnel.

DEPARTMENT OF HEALTH AND HUMAN SERVICES—HEALTH SERVICES AND RESOURCES ADMINISTRATION

Indian Health Services

Funding of $3,000,000 is provided for staffing of regional youth detoxification facilities; $9,000,000 for rehabilitation and follow-up services to Indian youth; $4,000,000 for community education and training; and $200,000 for an alcoholism rehabilitation program for adult Navajo Indians in Gallup, NM.

Indian Health Facilities

For Indian health facilities, $6,000,000 is provided for the construction of detoxification facilities for Indian youth and $3,000,000 is provided for renovation of Federally-owned structures for treatment of Indian youth.

CHAPTER IV.—DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALCOHOL, DRUG ABUSE AND MENTAL HEALTH ADMINISTRATION

Funding of $75,000,000 is provided for the Alcohol Drug Abuse and Mental Health block grant to the States. In addition, $150,000,000 is provided to the Secretary for targeted grants to the States for purposes of expanding the treatment and rehabilitation programs in areas of high incidences of drug abuse. Funding of $11,000,000 has also been included to be transferred to the Administrator of Veterans Affairs.

National Institute for Drug Abuse Research

Funding of $27,000,000 is provided to the National Institute for Drug Abuse to bring it to its fully authorized level.

National Institute for Alcohol Abuse and Alcoholism Research

Funding of $3,000,000 is provided to the National Institute for Alcohol Abuse and Alcoholism to bring it to its fully authorized level.

Information Clearinghouse and Evaluation Studies

Funding of $3,000,000 is provided to the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration to fund alcohol, drug abuse, and youth suicide informational clearinghouses and evaluation studies.

DEPARTMENT OF EDUCATION

Funding of $150,000,000 is provided for Drug Abuse Education and Prevention programs. These funds shall be distributed in accordance with the Anti-Drug Abuse Act of 1986.

RELATED AGENCY—ACTION

Operating Expenses

Funding of $2,500,000 is provided for public awareness and education activities relating to drug abuse prevention, funded under part C of title I of the Domestic Volunteer Service Act of 1973, as amended. An additional $500,000 for administration of the drug abuse prevention initiative is provided under title IV of the Domestic Volunteer Service Act of 1973, as amended.

CHAPTER V.—DEPARTMENT OF TRANSPORTATION

COAST GUARD

Operating Expenses

Funding of $39,000,000 is provided for Coast Guard "Operating expenses".

Acquisition, Construction, and Improvements

Funding of $119,000,000 is provided for "Acquisition, construction and improvements". Not to exceed $5,000,000 of this amount may be expended in relation to the Bahamian docking facility.

FEDERAL HIGHWAY ADMINISTRATION

Motor Carrier Safety Grants (Highway Trust Fund)

An additional $30,000,000 is provided for "Motor Carrier Safety Grants" to be derived from the Highway Trust Fund.

CHAPTER VI.—DEPARTMENT OF TREASURY

U.S. CUSTOMS SERVICE

Salaries and Expenses

Funding of $65,900,000 is provided for the U.S. Customs Service. The funds will provide for additional positions, as well as support equipment necessary to carry out enforcement responsibilities. The amendment also contains funds to enhance the Customs Service marine program.

Operations and Maintenance, Air Interdiction Program

Funding of $85,000,000 is to be dedicated to acquisition of aircraft, as well as, operation and maintenance of assets provided by the Department of Defense to remain available until expended. Funding is also included for establishment of a Command, Control, Communication, Intelligence Center (C3I) and funding to procure aircraft for the Bahamas Task Force.

U.S. SECRET SERVICE

Salaries and Expenses

Funding of $5,000,000 is provided for acquisition of voice privacy equipment.

CHAPTER VII.—DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

Operation and Maintenance, Air Force

Funding of $12,615,000 is to be available for the transfer of six Air Force helicopters to Davis-Monthan Air Force Base for use in carrying out the drug interdiction missions.

Operation and Maintenance, Defense Agencies

Funding of $27,000,000 is available to the Secretary of Defense. Of this amount, $12,000,000 shall be used to enhance intelligence collection activities concerning illegal importation into the United States of drugs originating in South America. The remaining $15,000,000 shall be transferred to the Coast Guard for the Tactical Law Enforcement Program.

Procurement

Aircraft Procurement, Army

Funding of $22,500,000 is provided for the purchase of five UH-60 Blackhawk helicopters. These aircraft shall be made available to the United States Customs Service for operation and maintenance.

Aircraft Procurement, Navy

Funding of $183,000,000 is provided for the purchase and modification of long-range surveillance aircraft equipped with 360-degree radar. The new aircraft shall be provided to the Navy to replace existing surveillance aircraft equipped with 360-degree radar to be refurbished and transferred to the appropriate government agencies.

Other Procurement, Air Force

Funding of $117,000,000 is provided for the procurement of seven aerostat radar systems, seven radar spares sets, and one radar spares set for the aerostat radar funded in the fiscal year 1986 Urgent Supplemental Appropriations Act. These radar systems shall be located pursuant to the authorization direction.

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

Mr. JOHNSTON. Mr. President, I yield to the distinguished Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, may I ask my good friend, the distinguished Senator from Louisiana, a question? He says there will be outlays of $642 million and $1.54 billion in budget authority, for which there is no revenue, for which no compensating reductions in spending are made, which will increase the deficit. But, as I understand it, and I hope the Senator will correct me if I am wrong, this will be outside the Budget Act and, therefore, it will not play any part in the triggering of sequestration. Is that correct?

Mr. JOHNSTON. That is not correct, as I understand it.

I see the distinguished chairman of the Budget Committee on his feet. He is perhaps the most authoritative source to answer that question.

Mr. DOMENICI. Mr. President, I do not know that that is the case, but I would attempt to answer the question.

If the Senator will recall, when we passed the drug bill, the Senate adopted language that said there is an urgent need of funds to carry out the programs and activities authorized by the provisions of this act, the Anti-Drug Act.

This act is a result of a bipartisan effort to combat national drug abuse problems, and only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

It is the sense of the Senate that the amounts authorized to carry out the preceding provisions of this act should be provided as new budget authority for fiscal year 1987. Such amount should not be provided through transfer or reductions in existing programs, but by such joint resolution for other programs, projects, or activities or reductions in any amount appropriated by such joint resolution for any other programs, projects, or activities.

The Senate adopted that. We just finished the continuing resolution. We adopted the drug bill with large votes. So what the distinguished chairman of the Appropriations Committee, the ranking member, Senator CHILES, and myself have done is we have submitted an amendment to the desk which funds the drug abuse bill which we overwhelmingly passed.

The appropriators spent every thing within the budget that they knew about and met every one of their totals in outlays, and by a long shot in budget authority.

At the end of this process, along comes this drug abuse program, which is now to be funded by that amendment which we sent to the desk, the

chairman of the appropriations, the ranking member, Senator CHILES and myself.

What we are now saying is that they will not be bound by the outlays in the budget, but, clearly, if this were to cause a sequester by causing us to breach the $154 billion, there is no waiver of that.

If the budget deficit exceeds the $154 billion prescribed by law because of this, after it goes through conference and the President puts his muscle behind cutting back the appropriations, when that event is finished we do not have any waiver against the sequester dollar limitation in anything we have done, and I do not believe anybody proposes any such thing here tonight. I do not. The appropriators do not.

All we are saying is you cannot fit them in the individual crosswalks for the 13 subcommittees as prescribed because you did not know about them and you want them funded, U.S. Senate. You voted in the bill, and now this is the funding for it.

Mr. PROXMIRE. What the Senator from New Mexico is telling us is that this $1.54 billion in authority and the $642 million in outlays is in all likelihood going to have to come out of spending that we have already appropriated and authorized. Is that correct?

Mr. DOMENICI. No.

□ 1750

Mr. DOMENICI. No, Mr. President.

Mr. PROXMIRE. Unless we are able to reduce the deficit to $254 billion or below—which I do not think anybody, any realist, really expects we can do in 1987.

Mr. DOMENICI. Mr. President, let me say that I think the Senator is in error. I think there is almost no chance, with the passage of this continuing resolution, and the reconciliation bill, anywhere from $8 billion to $10 billion, and it will probably be $12, the tax bill as passed—I think there is almost no chance that we will have a sequester. We will be below $254 billion and we will be below, in my opinion, by about $5 billion, maybe $6.

Mr. PROXMIRE. For the year 1987.

Mr. DOMENICI. For the year 1987 as measured on October 6, as required by the Budget Act that we are operating under.

Mr. PROXMIRE. My good friend from New Mexico is a marvelous optimist. I hope he is right, but I say I do not think there is the remotest chance. I think it will be $200 billion.

Mr. ARMSTRONG. Mr. President, I would like to have the attention of the Senator from Wisconsin because he is addressing a very important point. If the Senator from Wisconsin would remain in the discussion, I would like to make the point that there probably will not be a sequester because there is a tax increase built in for 1 year. But the point that has not been addressed as yet, and I address this first, at least as a question, to the chairman of the Budget Committee, is whether or not this amendment violates the Budget Act.

Mr. DOMENICI. Mr. President, let me respond to the Senator from Colorado. I would have indicated in opening remarks had I been permitted to give them, but dialog occurred, that I believe the amendment is subject to a point of order. But I believe the Senate agreed to that the other day when they said do it this way. So if somebody wants to make the point of order, I have told the appropriators I would have to waive because I think the Senate cannot have it both ways. They cannot pass a drug bill and then put on it that we tell them that they do not have to go back into their budgets which they have already complied with, and I think rather well, and cut again.

So, surely somebody could do that if they like and we could vote on it here and be here for another hour. But I think we understand we have added about $700 million.

Incidentally, we got no authority to break the budget because with budget authority, we are about $7 billion under. That is for one time, but that is true, nonetheless.

Mr. ARMSTRONG. Mr. President, I am very much in favor of the drug bill but I do not think we ought to be stampeded on the amendment without at least noting in passing the fact that it is violative of the Budget Act. We do not know whether we can find $7 billion or $1½ billion, or even $600 million, for this, whether or not we are going to ignore all the other places in the budget where we could have made the savings necessary to accommodate this.

We are going to spend about $1 trillion in 1987 and there are lots of places where we have low-priority programs, programs of national usefulness, that could have been curtailed and should have been curtailed in order to make room for this program of higher priority.

My original purpose in rising was to make the point of order under section 302(f) of the Budget Act. Clearly it violates that. But there is no particular point in my doing that.

My purpose is not to delay the Senate, but the point is having it established, because these chickens are going to be back to roost right after the first of the year. We are not going to have a sequester because we have a one-time tax increase built in. We are either going to have a mammoth, colossal sequester next year or we going to have a tax increase or have a stunning, unprecedented deficit. I regret that very much.

The PRESIDING OFFICER. Is there further debate?

Mr. WEICKER. Mr. President, I want to associate myself, unusually, with the comments of the distinguished Senator from Colorado and the distinguished Senator from Wisconsin.

I made an agreement the other night. It was in two parts. No. 1 was a sense of the Senate resolution which was read by the distinguished Senator from New Mexico. Second was that we would go ahead at the end of this bill and waive the Budget Act. Now, that is not going to happen, and we are going on by guess and by gosh here that hopefully, after all the conferences are over and everything else is done, the tax bill signed and so forth, there is going to be some money to pay for it.

But this is strictly guess work. I do not consider it responsive to the agreement which I made on this floor in order to avert extended debate on the drug bill.

So, like my distinguished friend from Colorado and my friend from Wisconsin, I shall not pursue the point any further. I suppose the point that should be asked, and it is a good question to leave this debate on, is what happens if such moneys are not available and indeed, we have not met the mark? What happens if?

To be continued.

Mr. DOMENICI. Mr. President, the amendment provides funding for the Anti-Drug Abuse Act of 1986 as it passed the Senate on Tuesday, September 30.

The amendment provides $1.5 billion in new budget authority to fund existing and new programs designed to combat the flow into and use of illegal drugs in the United States. The additional budget authority would increase the bill's outlays $724 million.

The new budget authority for this critical national need was not contemplated in the fiscal year 1987 concurrent budget resolution we adopted last spring, and I must be clear, it is subject to a budget act point of order when we look at the individual subcommittee's budget authority and outlay totals.

If the Senate were to follow the lead of the House in its funding of its drug bill initiative, a 0.34-percent cut in all discretionary budget authority in the bill would be required to keep the individual subcommittee's within their 302(b) outlay totals.

However, I must also note that overall the entire bill is $7.3 billion in budget authority below the total committee allocation.

I would like to revisit with my distinguished friend from Oregon a discussion we had when we passed the sense of the Senate amendment regarding the funding of the drug bill.

I believe the chairman of the Appropriations Committee is aware of the fact I stated earlier that, based on current scoring of this continuing resolution, CBO estimates indicate your total bill is $7.3 billion in budget authority below the budget resolution assumption.

Mr. HATFIELD. That is correct, based on our filing of section 302(b) allocations and my understanding of the CBO estimates.

Mr. DOMENICI. But, is it not also true that most individual subcommittee bills are slightly below—except for defense—or right at their outlay limits, and it was this latter fact, in most cases, that has led to the budget act point of order being raised and sustained repeatedly over the last week.

Mr. HATFIELD. Again, that is my understanding of the current CBO scoring.

Mr. DOMENICI. Under the Budget Act procedure, modified in the Gramm-Rudman-Hollings legislation last year, I believe the chairman is aware that a committee may report alterations in its allocations under section 302(e). Therefore, I ask the distinguished chairman if it is not a real possibility that based on the real likelihood of a conference agreement on this bill finding additional savings—among the various subcommittees—that the additional outlays for this drug amendment be accommodated within any final conference agreement.

Mr. HATFIELD. I believe that that possibility exists.

Mr. DOMENICI. And that if that were the final outcome, then the Appropriations Committee would report a revised 302(b) allocation to avoid the possible Budget Act point of order against the conference agreement.

Mr. HATFIELD. The committee would, as the distinguished Budget Committee chairman suggests, use our prerogative under section 302(e) of the Budget Act to report revised allocations to remain within the total budget resolution allocation.

Mr. DOMENICI. I thank the distinguished chairman for his response.

I, therefore, expect that the final conference agreement will remain within the overall budget resolution allocations, and I will, therefore, not raise the valid budget point of order on this amendment.

I do not want to suggest that by not raising the point of order I take this action lightly, and I remind my colleagues and compliment them on the fact that every Budget Act point of order raised on this bill has been sustained. But, I believe we have already acted on this issue and the Senate has overwhelmingly spoken in its 97 to 2 vote on the underlying authorization bill last Tuesday.

Surely, with a total bill of some $550 billion, the conference on this resolution will be able to find the required $1.5 billion budget authority and the $720 million in outlays sufficient to fund this amendment—funding for a critical national need that was not assumed at the time we passed the budget resolution.

Mr. President, I ask unanimous consent that certain materials relating to this amendment be printed in the RECORD.

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

OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

[Fiscal Year 1987 and in million dollars]

Title	Senate-passed authorization	Continuing resolution appropriations amendment	Appropriation versus authorization
I. Commerce-State	305	298	−7.0
II. Foreign Ops	66	58	−8.0
III. Interior	73	64	−9.0
IV. Labor-HHS-ED	412	422	+10.0
V. Transportation	163	188	+25.0
VI. Treasury Postal	157	158	+1.0
VII. Defense	378	362	−16.0
Total:			
Budget authority	1,554	1,549	−5.0
Outlays	680	724	+43.0

HOUSE CONTINUING RESOLUTION ANTIDRUG VERSUS SENATE CONTINUING RESOLUTION ANTIDRUG—FISCAL YEAR 1987 (COMPARED TO SENATE APPROPRIATION LEVEL)

[Dollars in millions]

House continuing Resolution over (+) or under (−) Senate continuing Resolution	Budget authority	Outlays
COMMERCE, STATE, JUSTICE		
Drug Enforcement Administration	81	74
Federal Bureau of Investigation—Secure voice radios	−4	−3
Federal prison construction	84	27
Federal prison salaries and expenses	−48	−45
Judiciary—Court of Appeals, District Court, S & E	3	3
Judiciary—Defender Services	−20	−12
Judiciary—Fees of jurors and commissioners	−10	−9
Justice Programs, Office of—Pilot Program	−2	−1
Justice Statistics, Bureau of	51	17
Justice—Assets Forfeiture fund	−45	−38
Justice—Hawaii helicopter	0	0
Mandatory sentencing	0	0
State and local narcotics control assistance	545	137
U.S. attorneys	3	2
U.S. Information Agency	81	41
U.S. Marshals Service	5	5
U.S. prisoners Non-Federal	1	1
Total Commerce, State, Justice	725	198
DEFENSE		
360 radar on Coast Guard airplanes	0	0
Aerostat Radar System—3	0	0
Aerostat Radar—7	0	0
Aircraft configured W/AN/APS–138 radar—4	0	0
Blackhawk helicopters	0	0
Enhanced intelligence collection	0	0
Helicopter and 4 Aerostat Radar	0	0
Refurbish and replace E2C	0	0
Transfer 6 helicopters—operation and maintenance	0	0
Transfer to DOT for Coast Guard on ships	0	0
United States/-Bahamas Task Force	0	0
Air Force—Operations and maintenance	−13	−10
Defense Agencies—Operations and maintenance	−27	−23
Army—Aircraft procurement	−18	−3
Navy—Procuement	−183	−17
Air Force—Other procurment	−122	−57
Total Defense	−362	−110
FOREIGN ASSISTANCE		
Agency for International Development	−56	−37
Narcotics Foreign Assistance	−20	−7
Total Foreign Assistance	−76	−44
INTERIOR		
Forest Service	66	57
Indian Programs	56	37
Total Interior	122	84
Labor, Health and Human Services, and Education		
Action grants	−30	−20
Advisory Council on Education of Athletes	1	1
Alcohol, Drug abuse, and Mental Health Service Grant	46	32
Drug-Free Learning—State Grant Program	200	16
Information Clearinghouse	−3	0
Media Commission on Drug Abuse	0	0
National Institute on Alcohol Abuse and Alcoholism	−71	−71
National Institute on Drug Abuse	−143	−99
National Plan/Studies	0	0
Study of Drug Abuse at Workplaces	0	0
Substance Abuse Coverage Study	0	0
Transfer to Veteran's Medial Care	−11	−9
Youth Suicide Information	0	0
Total Labor, Health and Human Services	−11	−150
TRANSPORTATION		
Coast Guard—Aquisition, construction, and improvement	−210	−77
Coast Guard—Operating expenses	40	14
Coast Guard—Reserve training	3	2
Commercial Motor Vehicle Safety	−49	−39
Total Transportation	−216	−100
TREASURY, POSTAL, AND GENERAL GOVERNMENT		
Custom—Forfeiture fund	12	12
Customs—Operations and maintenance—Air interdiction	41	23
Customs—Salaries and expenses	22	20
Office of Personnel Management—Federal employees	0	0
Secret Service—Secure voice radios	−5	−4
Train, EQ, ED Grants—Puerto Rico, Virgin Islands	8	6
White House Conference on Drug Abuse and Control	3	3
Total Treasury, Postal, and General Government	82	60
Total increase	263	−63

Mr. BIDEN. I would like to make an inquiry to the floor manager of this bill in regard to the drug bill amendment to the continuing resolution.

Mr. RUDMAN. I would be happy to clarify any provision in this amendment for my colleague from Delaware [Mr. BIDEN].

Mr. BIDEN. My inquiry relates to the operation of the Department of Justice and Customs Service forfeiture funds, which have been significantly modified as part of the Senate-passed drug bill. As you know, at the end of each year, 90 percent of the unexpended and unobligated proceeds in the Justice and Customs forfeiture funds shall be transferred into a new special forfeiture fund. Proceeds in this special fund are to be used for drug control efforts at the Federal and State and local levels. In this way, seized and forfeited assets are to be used solely for drug enforcement and drug abuse efforts, so that, in effect, drug traffickers are subsidizing a major portion of the national drug control program.

Now as part of the drug bill funding amendment to the continuing resolution, one section appropriates such sums as are necessary from the Justice assets forfeiture fund to pay for ex-

penses pursuant to 28 U.S.C. 524. My interpretation is that this appropriation from the Justice assets forfeiture fund only would provide for the reimbursement of expenses detailed in 28 U.S.C. 524, as amended by the Anti-Drug Abuse Act of 1986, estimated for fiscal year 1987 to be approximately $75 million by the Congressional Budget Office and the Justice Department, and that 90 percent of the unexpended and unobligated proceeds remaining in the Justice assets forfeiture fund would be transferred to the special fund for uses detailed in the Senate passed drug bill.

Mr. RUDMAN. Simply put, the distinguished Senator from Delaware [Mr. BIDEN] is correct. The appropriation provided for in the drug bill amendment only relates to the availability of funds in 1987 for the specific expenses detailed in 28 U.S.C. 524. This amendment would affect the special forfeiture fund only in the sense that the level of expenses that are reimbursed from the Justice assets forfeiture fund determines the level of proceeds eventually transferred to the special fund.

Mr. BIDEN. And that the such sums appropriation in the drug bill amendment only provides moneys for expenses from the Justice assets forfeiture fund and does not directly affect the use of moneys in the special forfeiture fund.

Mr. RUDMAN. Once again, the Senator from Delaware [Mr. BIDEN] is correct. The provision in the drug bill amendment appropriating funds from the Justice assets forfeiture fund will not affect the use of moneys in the special forfeiture fund.

Mr. BIDEN. I thank my distinguished colleague from New Hampshire [Mr. RUDMAN] for this very helpful clarification.

CBO SCORING OF THE DRUG AMENDMENT

Mr. McCLURE. Mr. President, although the Congressional Budget Office has not finalized its scoring of the drug amendment, preliminary indications show that a large amount of the budget authority is being outlayed in fiscal year 1987.

I have not analyzed the scoring of all chapters of the drug amendment but I have taken a look at the scoring of the interior chapter. In the interior chapter, CBO assumes that $43 million of budget authority in the Bureau of Indian Affairs, Indian Health Services, and Indian Health Facilities will outlay at nearly 50 percent. A large part of this money, however, is construction money which we are appropriating in construction accounts. Normally those accounts spend out at about 30 to 35 percent. Since these agencies have not prepared any designs or even initiated any A and E work, I suspect that the spend out would be slower than 30 to 35 percent.

A good comparison would be the jobs bill funds that were appropriated in February 1983. The Bureau of Indian Affairs still have not spent all of those construction funds and I would estimate that the first year spend out was slightly above 10 percent.

A similar argument can be made for the training funds for additional enforcement personnel. I assume that agencies will not rush into further training programs without proper plans. Therefore, it is also unlikely that those funds will outlay at the 90-percent rate that CBO has preliminarily indicated.

I do not want to be unduly critical of the work the Congressional Budget Office does. It is extremely difficult to score an authorization bill and the corresponding appropriations language late in a congressional session when there are hundreds of other amendments that also need to be scored. However, I do feel that this is a different set of circumstances which requires a different set of assumptions.

Therefore, I would ask that before the Congressional Budget Office finalizes its scoring of this bill, it inquires of the affected agencies what they feel the proper scoring should be.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3204) was agreed to.

Mr. JOHNSTON. 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. 3205

AMENDMENT NO. 3206

(Purpose: To express the sense of the Congress that the President should propose new recommendations for amending the Foreign Assistance Act of 1961 or otherwise modifying the activities authorized under the Act)

AMENDMENT NO. 3207

(Purpose: To amend the District of Columbia Code to broaden the composition of the District of Columbia Commission on Mental Health)

AMENDMENT NO. 3208

AMENDMENT NO. 3209

AMENDMENT NO. 3210

(Purpose: To delay rulemaking for OSM until March 31, 1987)

Mr. JOHNSTON. Mr. President, I have one final quick package of amendments which, with the consent of the Senate, I shall send up and ask to have considered en bloc.

These amendments have been meticulously cleared: One by Mr. HECHT and Mr. METZENBAUM involving geothermal leasing; one by Senator KASSEBAUM and Mr. LUGAR, sense of the Senate stating that the President should undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961; one by Senator INOUYE relative to the composition of the District of Columbia Mental Health Commission to provide greater flexibility in its administration; one by Senator PRYOR relative to the Environmental Protection Agency and a particular plant he has in the State of Arkansas; one omnibus amendment which provides a New River Gorge administrative site, a memorial to women that have served in the Armed Forces, a bill to allow ranchers to perfect patents on desert lands, and a memorial to black American veterans of the Revolutionary War.

Mr. President, there is one final amendment that should be considered part of that. That is on behalf of Senator McCLURE that involves proposed rulemaking for the Office of Surface Mining and Reclamation. That was in the stack last night and has now been fully cleared.

Mr. President, I send these amendments to the desk and ask for their immediate consideration. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will state the amendments en bloc.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for himself, Mr. HECHT, Mr. METZENBAUM, Mr. INOUYE, Mr. PRYOR, Mr. McCLURE, Mr. PELL, Mr. ABDNOR, Mr. BYRD, Mr. ROCKEFELLER, Mr. GARN, Mr. KERRY, Mr. MURKOWSKI, Mrs. KASSEBAUM, and others, proposes amendments numbered 3205, 3206, 3207, 3208, 3209, and 3210.

The bill is amended by adding at the appropriate place two new sections as follows:

"SEC. —.

The primary term of any geothermal lease in effect as of July 27, 1984, issued pursuant to the Geothermal Act of 1970 (Public Law 91-581, 84 Stat. 1566, 30 U.S.C. 1001-1025) is hereby extended to December 31, 1988, if the Secretary of the Interior finds that—

(a) a bona fide sale of the geothermal resource, from a well capable of production, for delivery to or utilization by a facility or facilities, has not been completed (1) due to administrative delays by government entities, beyond the control of the lessee, or (2) such sale would be uneconomic;

(b) substantial investment in the development of or for the benefit of the lease has been made; and

(c) the lease would otherwise expire prior to December 31, 1988.

SEC. —. PROTECTION FOR UNITS OF THE NATIONAL PARK SYSTEM

(a) The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") shall publish for public comment in the Federal Register within 120 days after the date of enactment of this section a proposed list of significant thermal features within the following units of the National Park System:

Mount Rainier National Park;

Lassen Volcanic National Park;

Yellowstone National Park;
Bering Land Bridge National Preserve;
Gates of the Arctic National Park and Preserve;
Yukon-Charley Rivers National Preserve;
Katmai National Park;
Aniakchak National Monument and Preserve;
Wrangell-St. Elias National Park and Preserve;
Glacier Bay National Park and Preserve;
Denali National Park and Preserve;
Lake Clark National Park and Preserve;
Hot Springs National Park;
Sequoia National Park;
Hawaii Volcanoes National Park;
Lake Mead National Recreation Area;
Big Bend National Park;
Olympic National Park;
Grand Teton National Park;
John D. Rockefeller, Jr. Memorial Parkway;
Haleakala National Park; and
Crater Lake National Park.

The Secretary shall include with such list the basis for his determination with respect to each thermal feature on the list. Based on public comment on such list, the Secretary is authorized to make additions to or deletions from the list. Not later than the 60th day from the date on which the proposed list was published in the Federal Register, the Secretary shall transmit the list to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives together with copies of all public comments which he has received and indicating any additions to or deletions from the list with a statement of the reasons therefor and the basis for inclusion of each thermal feature on the list. The Secretary shall consider the following criteria in determining the significance of thermal features:

(1) size, extent, and uniqueness;

(2) scientific and geologic significance;

(3) the extent to which such features remain in a natural, undisturbed condition; and

(4) significance of thermal features to the authorized purposes for which the National Park System unit was created.

The Secretary shall not issue any geothermal lease pursuant to the Geothermal Steam Act of 1970 (Pub. L. 91-581, 84 Stat. 1566), as amended, until such time as the Secretary has transmitted the list to the Committees of Congress as provided in this section.

(b) The Secretary shall maintain a monitoring program for those significant thermal features listed pursuant to subsection (a) of this section.

(c) Upon receipt of an application for a geothermal lease the Secretary shall determine on the basis of scientific evidence of exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section. Such determination shall be subject to notice and public comment. If the Secretary determines on the basis of scientific evidence that the exploration, development, or utilization of the land subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section, the Secretary shall not issue such geothermal lease. In addition, the Secretary shall withdraw from leasing under the Geothermal Steam Act of 1970, as amended, those lands, or portion thereof, subject to the application for geothermal lease, the exploration, development, or utilization of which is reasonably likely to result, based on the Secretary's determination, in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section.

(d) With respect to all geothermal leases issued after the date of enactment of this section the Secretary shall include stipulations in lease necessary to protect significant thermal features listed pursuant to subsection (a) of this section where a determination is made based on scientific evidence that the exploration, development, or utilization of the funds subject to the lease is reasonably likely to adversely affect such significant thermal features. Such stipulations shall include, but are not limited to:

(1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;

(2) requiring the lessee to report annually to the Secretary on its activities;

(3) requiring the lessee to continuously monitor geothermal production and injection wells; and

(4) requiring the lessee to suspend activity, temporarily or permanently, on the lease if the Secretary determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features listed pursuant to subsection (a) of this section until such time as the significant adverse effect is eliminated.

(e) The Secretary of Agriculture shall consider the effects of significant thermal features of those units of the National Park System identified in susbsection (a) of this section in determining whether to consent to leasing under the Geothermal Steam Act of 1970, as amended, on national forest or other lands administered by the Department of Agriculture available for leasing under the Geothermal Steam Act of 1970, as amended, including public, withdrawn, and acquired lands.

(f) Nothing contained in this section shall affect the ban on leasing under the Geothermal Steam Act of 1970, as amended, with respect to the Island Park Known Geothermal Resources Area, provided for in Public Law 98-473 (98 Stat. 1837) and Public Law 99-190 (99 Stat. 1267).

(g) Except as provided herein, nothing contained in this action shall affect or modify the authorities or responsibilities of the Secretary under the Geothermal Steam Act of 1970, as amended, to any other provision of law.

(h) The provisions of this section shall remain in effect until Congress determines otherwise.

● Mr. METZENBAUM. Mr. President, this amendment contains a park protection section, which I introduced to provide enhanced protection for the geothermal features of our national parks.

There are 22 national parks and monuments with significant geothermal features. They contribute to some unique aspects of the parks:

The geysers of Yellowstone; the deep blue color of Crater Lake; the hot springs and geysers of Lassen National Park.

While commercial leasing and development takes place outside of the parks, the geothermal reserves are not well researched or understood. We cannot be certain that development outside the parks won't permanently alter or damage features within them.

The U.S. Geological Survey has produced some evidence which suggests that this could happen. If so, it could cause irreparable damage to some of the most unique features of our parks.

Yet , right now, there is leasing and development planned or under way near the borders of some of these parks. Development near other parks is sure to follow.

Unfortunately, the current leasing law does not provide the protections which are needed.

This amendment will add significant protection for these resources.

It requires the Secretary of the Interior to identify and list significant geothermal features in 22 parks, and establish a program to monitor the impacts of any lease development near them.

It also empowers the Secretary to administer the leases to protect the parks by putting stipulations in leases where development is likely to affect the parks, and to withdraw lands from leasing if development has significant adverse effects on the geothermal features of the parks.

Without these provisions we may lose some of the features which make our parks unique throughout the world.

Mr. President, this issue was first promoted by the late Senator Jackson, and I am pleased that we are carrying through on his initiative. It enables us to protect some of the beautiful features of our parks for the public and future generations.

Mr. President, I thank Senators McCLURE and HECHT for their cooperation on this issue.●

● Mr. HECHT. Mr. President, the amendment allows for a 2-year extension of geothermal leases that would otherwise expire at the end of this year. This amendment is necessary because the pressures of the last few weeks of this Congress did not allow the Committee on Energy and Natural Resources to bring to markup S. 1322, a bill I introduced to set up a system to allow diligent geothermal developers to have their geothermal leases extended for up to 15 years. I am gratified that a bipartisan group of 15 Senators agreed to cosponsor that legislation.

This amendment also includes a landmark compromise on protecting significant geothermal features of the National Park System.

I would like to congratulate all parties on their hard work on this issue. This amendment is not perfect, but it is fair, and it represents a compromise that we all can live with. It will protect the significant geothermal features of our Nation's national parks,

and will provide industry with the certainty necessary to make investments for America's energy future.

It will also, Mr. President, pave the way for the Energy Committee to rapidly handle comprehensive lease extension legislation in the next Congress. The park protection issue, which has been the main reason the Energy Committee has had such a difficult time with lease extension legislation, can be largely resolved if the Senate accepts this second degree amendment, and then follows through by adopting the first degree amendment.

Unless this amendment succeeds, Mr. President, companies that have, in several instances, spent millions of dollars in developing their leases, but that have been frustrated by administrative delays, or reluctant utilities, or a temporary energy glut in the local utility service area, will suddenly lose their leases, will lose their investments, will lose their chance to contribute to the Nation's energy economy.

The most regrettable thing about this situation is that these leases belong to the very same companies that were pioneers in the geothermal field. These are the companies that assumed the greatest economic risks, that struggled to develop a technology that was new and different and terribly expensive. These are the companies that had to develop new engineering techniques, and have expanded the wealth of human knowledge in geology and related sciences, as they worked to create this clean new energy technology for America.

If the Senate fails to adopt this amendment, that failure will be a severe body blow to the Nation's geothermal industry—an industry whose birthplace was the State of California, and is only now gradually blossoming as a valuable source of energy in other parts of the country.

The issue of geothermal lease extension is a difficult one, but we have made progress this year, and I believe the Energy Committee will be able to report authorizing legislation on this issue in the next Congress.

Mr. President, this amendment deserves the support of every Member in this body who is concerned about fostering alternative and renewable forms of energy.

This amendment deserves the support of every Senator who is concerned about the economic or national security aspects of energy independence.

This amendment deserves the support of every Senator who wishes to encourage the development of new technology, and who wishes to promote the sort of high-risk ventures that have allowed the American economic system to be the wonder of the world.

This amendment deserves the support of every Senator who is interested in encouraging a form of energy that generates little or no pollution.

And finally, Mr. President, this amendment deserves the support of every Member of this body who feels electric utility customers are best protected from rate shock by gradually adding electric production capacity in fairly small increments, rather than by adding electric generating capacity in large, expensive chunks.

The bottom line is this: we have made progress, the outlook for next year is hopeful. I would request that my colleagues leave the door open for a comprehensive solution to this issue, by supporting this amendment.●

AMENDMENT NO. 3206

At the appropriate place in the joint resolution, insert the following new section:

SEC. .(a) The Congress finds that the activities conducted under the authorities of the Foreign Assistance Act of 1961 have contributed greatly to the alleviation of human suffering and the promotion of economic development in the recipient countries. The Congress finds further that changing circumstances in the developing countries and changing availability of resources from the United States require that a comprehensive review of the activities under the Act be undertaken.

(b) It is, therefore, the sense of the Congress that the President should undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961 and should send to the Senate Foreign Relations Committee and the House Foreign Affairs Committe by February 1, 1987, his recommendations for amending the Act or otherwise modifying those activities.

AMENDMENT NO. 3207

Insert at the appropriate place:

SEC. . MEMBERSHIP OF HEALTH CARE PROFESSIONALS ON COMMISSION.

(a) Section 502(a) of title 21 of the District of Columbia Code is amended by striking out the last sentence and inserting in lieu thereof "Eight of the members of the Commission shall be health care professionals who are psychiatrists, or doctoral level psychologists, practicing in the District of Columbia who have had not less than five years' experience in the treatment of mental illnesses.".

SERVICE OF HEALTH CARE PROFESSIONALS

(b) Section 502(c) of title 21 of the District of Columbia Code is amended to read as follows:

"(c) Members of the Commission who are health care professionals shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the court, so that at any one time the Commission shall consist of the chairman and two members who are health care professionals. Members of the Commission who are health care professionals may practice their profession during their tenure of office, but may not participate in the disposition of a case in which they have rendered professional service or advice.".

TRANSITION PROVISIONS

(c) The members of the District of Columbia Commission on Mental Health on the date of the enactment of this Act shall serve the unexpired portions of their terms as members of such commission.

EFFECTIVE DATE

(d) The provisions of this Act shall take effect on the date of enactment.

● Mr. INOUYE. Mr. President, the amendment which I am introducing today would amend the composition of the District of Columbia Mental Health Commission to provide greater administrative flexibility. My amendment would ensure that doctoral level psychologists will be eligible for appointment to the commission. This provision is consistent with the policy recommendations of the American Bar Association in its Criminal Justice Mental Health Standards and the entire Federal Criminal Code.

I am pleased that this recommendation was proposed by Mr. FAUNTROY in the U.S. House of Representatives in H.R. 2855.●

AMENDMENT NO. 3208

The Administrator of the Environmental Protection Agency shall enter into a cooperative enforcement agreement under section 28 and related sections of the Toxic Substances Control Act with the State of Arkansas. Such agreement shall include provisions providing for the presence of a state inspector on site during hours of operation to insure compliance with all applicable PCB regulations, including permit conditions, at the Ensco Incinerator in El Dorado, Arkansas.

AMENDMENT NO. 3209

At the appropriate place in H. Res. 738, insert the following new section:

SEC. .(a) Section 1102(a) of the National Parks and Recreation Act of 1978 (Public Law 95-625) is amended by inserting the following after the second sentence: "In addition, the Secretary may acquire by any of the foregoing methods not to exceed ten acres outside the boundaries of the national river for an administrative headquarters site, and funds appropriated for land acquisition shall be available for the acquisition of the administrative headquarters site.".

(b) Section 1112 of Public Law 95-625 is amended by striking "$500,000" and inserting "$3,000,000".

(c) the Congress finds that—

(1) certain developed and productive desert land entries in Idaho, identified in subsection (d) of this section, made pursuant to the Act entitled "An Act to provide for the sale of desert lands in certain States and Territories", approved March 3, 1877 (43 U.S.C. 321, et seq.), commonly known and hereinafter referred to as the "Desert Land Act", have been cancelled by the Secretary of the Interior pursuant to holding limitation regulation promulgated pursuant to section 7 of the Act (43 U.S.C. 329);

(2) such regulations were retroactively applied to such desert land entries several years after the entries were allowed and more than two years after final development, proof and final payment for such entries were made, without giving the entrymen any opportunity to comply with the new interpretation of such regulations;

(3) cancellation of such desert land entires was harsh and unfair, and resulted in forfeiture to the Government of the developed entries and the monies paid for the land;

(4) such entrymen have fulfilled the requirements of the Desert Land Act in all respects other than such holding limitation regulations; and

(5) such entrymen, or their heirs or devisees, should have the entries reinstated and qualify for issuance of patents to carry out the objectives of the Desert Land Act.

(d) The names of the entrymen, and the serial numbers of the desert land entries generally known as the "Sailor Creek Project", to which this Act applies, are as follows:

Bureau of Land Management

Entryman	*Serial Number*
G. Patrick Morris	Idaho 013820
John E. Roth	Idaho 013905
Elise L. Neeley	Idaho 013906
Lyle D. Roth	Idaho 013907
Vera M. Noble (Now Baltzor	Idaho 011426
Charlene S. Baltzor	Idaho 014128
George R. Baltzor	Idaho 014129
John E. Morris (deceased)	Idaho 014130
Juanita M. Morris	Idaho 014249
Nellie Mae Morris (decreased)	Idaho 014250
Milo Axelsen	Idaho 014251
Peggy Axelsen	Idaho 014252

(e)(1) The desert land entities identified in subsection (d) of this Act are hereby reinstated. The entrymen, or the heirs or devisees of any deceased entryman, may—

(A) rescind any agreement which is prohibited by the Secretary of the Interior pursuant to regulations under section 7 of the Act (43 U.S.C. 329) within six months after the date of enactment of this Act; and

(B) resubmit final proof of reclamation and cultivation of the land in accordance with the provisions of section 7 of the Act (43 U.S.C. 329) before December 31, 1988.

(2) The Secretary of the Interior shall issue patents to the entrymen named in subsection (d), or their heirs or devisees upon compliance with the provisions of subsection (e)(1) and the submission of satisfactory final proof.

(f) Notwithstanding any other provision of law, the property right prior to issuance of a patent to the land of any entryman identified in subsection (d) of this section, or the heirs or devisees of any such entryman whose entry is reinstated in accordance with subsection (c) of this section, shall be a personal right, inheritable but not assignable. Any such entry may be mortgaged in the manner permitted by regulations promulgated by the Secretary of the Interior for the purpose of securing repayment of monies borrowed for development of the entry or for farm operating or crop production expenses.

(g)(1) The woman in military service for America Memorial Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the Senate on September 10, 1986 (S. Rpt. 99-421).

(2) The organization or organizations approved by the Secretary shall establish the memorial with non-Federal funds.

(h)(1) The Black Revolutionary War Patriots Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the House of Representatives on September 29, 1986.

(2) The Black Revolutionary War Patriots Foundation shall establish the memorial with non-Federal funds.

Mr. ROCKEFELLER. Mr. President, on behalf of myself and the minority leader, Senator BYRD, I am pleased to offer an amendment to House Joint Resolution 738, the continuing appropriations resolution. I understand this amendment has been cleared on both sides.

This amendment is identical to S. 2384, which I introduced with Senator BYRD, that cleared the Senate Energy and Natural Resources Committee by a unanimous vote and was reported on September 19. The Park Service also supports S. 2384.

The bill authorizes the acquisition of land for construction of the New River's administrative headquarters, as well as a visitors' center and maintenance facility.

Over a quarter of a million visitors come to the New River each year. For white water rafters, the New River is one of the best rafting rivers in this country. For anglers, the New River has long been a favorite fishing spot. For the local community, the river is an important source of jobs and economic activity in the southern part of my State that has severe economic problems.

Given the sheer volume of New River visitors, it's important that the river be well run and adequately maintained—and it needs the facilities to do that.

Presently, the administrative headquarters for the New River are temporarily located in three rented buildings in Oak Hill. To improve park operations, the National Park Service selected this 10 acre site in the historic coal town of Glen Jean. The Glen Jean headquarters will consolidate and vastly improve the Park Service's New River operation. It will ensure that information and services for park visitors will be located in a centrally located, accessible place. It will also be a great boost to the local economy.

Mr. President, I urge Congress to adopt this measure which makes it clear that funds appropriated for land acquisition within the New River may be used to acquire property for the Glen Jean headquarters site.

NEW RIVER GORGE NATIONAL RIVER

Mr. BYRD. Mr. President, Senator ROCKEFELLER and I are jointly sponsoring one of the en-bloc amendments. It is an amendment to authorize the construction of a park headquarters, maintenance facility and a small visitors' station just outside the authorized boundary of the New River Gorge National River.

Our amendment is identical to S. 2384, a bill which Senator ROCKEFELLER introduced on April 29, 1986, for both of us. This bill was reported favorably by the Senate Energy and Natural Resources Committee this past September 11.

Presently, the National Park Service administers operations for the 50-mile long park from temporary facilities located in three rental buildings in Oak Hill, WV. In February of this year, after studying at least 12 candidate locations, the Service selected a 10-acre site in Glen Jean on which to construct a new administrative site.

While Glen Jean is ideally located near the midpoint of the National River and is just off a major highway that parallels the river, the selected site is outside the park boundaries authorized by Public Law 95-625. The amendment which we are sponsoring would permit the Park Service to construct this necessary new facility in their preferred location.

There is no budgetary impact resulting from this authorization bill itself. This bill, however, should permit the Park Service to save money in future appropriations bills because the consolidated administrative facility proposed for Glen Jean has inherent efficiencies not present in many of the other candidate sites or in the three temporary buildings now in use.

This facility is needed now for effective administration of the park which is visited by 260,000 people each year. And, this need is magnified tremendously when one considers that visitation is expected to more than double in the next few years when Interstate Route 64 is completed through the southern portion of the park.

In conclusion, Mr. President, I hope that my colleagues will support our amendment. It will not increase the bill totals, it is noncontroversial, and it is needed now.

MEMORIAL TO HONOR BLACK REVOLUTIONARY WAR PATRIOTS AND WOMEN IN ARMED FORCES

● Mr. METZENBAUM. Mr. President, I rise in support of this amendment to establish a memorial on Federal land in the District of Columbia.

Similar measure has already passed the House and legislation introduced in the Senate by my distinguished collegue from Tennessee, Senator GORE.

Reported by the Committee on Energy and Natural Resources. Senate bill has at least 47 cosponsors.

This memorial would be established in honor of the estimated 5,000 courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or

filed petitions with courts and legislatures seeking their freedom.

Establishment of this memorial is long overdue.

For many years, little or no recognition has been given to the 5,000 black slaves and free persons who served side by side with whites in all major battles of the Revolutionary War.

The black soldiers were wounded, disabled, and captured, just as were the white patriots.

Senate Joint Resolution 143 authorizes the Black Revolutionary War Patriots Foundation to raise private funds for the establishment of the memorial—no Federal funds will be expended. The foundation is also authorized to prepare the design and plans for the memorial, subject to the approval of the Secretary of Interior, the Commission of Fine Arts, and the National Capital Planning Commission. Upon completion, the memorial will be maintained by the Park Service.

I commend my colleague from Tennessee for introducing this bill in the Senate.

I am very hopeful that we can give final congressional approval in this session of Congress to the establishment of an important and long overdue memorial.

The second memorial to be established by this amendment is in honor of women who have served in or with the Armed Forces of the United States, as authorized by House Joint Resolution 36 introduced in the House by Representative MARY ROSE OAKAR and passed by the full House; and Senate Joint Resolution 156, introduced in the Senate by Senator MURKOWSKI and reported by the Committee on Energy and Natural Resources.

This amendment authorizes the Women in Military Service for America Memorial Foundation to establish a memorial on Federal land in the District of Columbia or its environs to honor women who have served in or with the Armed Forces of the United States.

I believe that the time has come for this country to give proper recognition and honor to the hundreds of thousands of women who have served their country with the Armed Forces.

The women of this Nation have for many years contributed to our national defense.

Beginning with the Revolutionary War and continuing to the present, women have served with unrivaled dedication and courage during all wars in which our Nation has been engaged.

Women currently make up about 10 percent of the total military force, they graduate from the service academies, and they serve in many capacities. Today there are well over 1 million women veterans.

This memorial will also be established with private funds, and will subsequently be managed by the Park Service.

I am pleased that this Congress will finally take this long-awaited step giving due recognition and honor to the important contributions made by the women of this country to the Armed Forces in the defense of this Nation.●

AMENDMENT NO. 3210

Notwithstanding any legislative or judicial requirement, the Office of Surface Mining Reclamation and Enforcement may delay the finalization of the proposed rulemaking amending Parts 773 and 778 of the Code of Federal Regulations as published in the FEDERAL REGISTER on April 5, 1985 (50 FR13724) until March 31, 1987.

● Mr. WARNER. Mr. President, the amendment I am offering permits OSM to postpone a proposed rulemaking at the Office of Surface Mining and Reclamation and Enforcement [OSMRE] until March 31, 1987.

The proposed rule is the so-called Ownership and Control Rule which redefines the terms "ownership" and "control" as they relate to a coal company.

A primary component of implementing this rule is contingent upon the acquisition of the applicant-violator system [AVS]. It is not the intent of this Senator or the Interior Subcommittee to delay the AVS system but I feel a delay is necessary to determine what the costs of that expanded system are. As my colleagues know, computer systems like these are very costly and this amendment would allow OSM to incorporate this estimate in their fiscal year 1988 budget request before the proposed rule is finalized.

I know of no objection to the amendment and I urge its adoption.●

● Mr. METZENBAUM. Mr. President, I want to point out that this amendment is simply a permissive amendment. It allows OSM to take up to March 31, 1987, to finalize the proposed rulemaking, if the director feels he needs that much time to do a complete and thorough job.

However, I want to strees that this amendment does not require that the final rule be delayed until March 31. This amendment just makes a little more time available to OSM if the Director feels he needs all or some of it to do a more thorough job. Nothing in this amendment is meant to suggest that the Senate believes or does not believe additional time is necessary.●

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 3205, 3206, 3207, 3208, 3209 and 3210) were agreed to en bloc.

Mr. DOLE. I move to reconsider the vote by which the amendments were agreed to en bloc.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AGRICULTURAL EXTENSION SERVICE

Mr. PRESSLER. Mr. President, as the Senate considers the 1987 continuing resolution, I would like to express my strong support for agricultural research extension programs and for the funds provided for these programs. I would also like to salute the spirit of volunteerism found in these programs and the multitude of men and women who share their time, talent, and financial resources to further the program's causes.

I am pleased to see that the Senate Appropriations Committee has maintained funding for the extension program at previous levels. Last winter, the administration proposed drastic funding reductions for extension programs. This proposal was very untimely. With the current depressed rural economy, the extension service provides valuable services to help farmers and ranchers improve their management, develop new crops, or make other changes to help make a profit.

The funds provided for these agricultural research and extension programs will be Federal dollars well spent. I firmly believe that if we are to continue to increase agricultural productivity, great strides in agricultural research and a continued effective extension service is essential. This is especially important in these days of slowing rates of increases in farm productivity.

Having grown up on a small family farm, I know from personal experience that the Cooperative Extension Service has been very effective in increasing farm productivity. The Cooperative Extension Service has been an excellent example of cooperation among Federal, State, and local governments for more than 100 years.

4-H is the youth education program of the Cooperative Extension Service, an informal education program conducted by the U.S. Department of Agriculture and county governments. The program combines the work of extension staffs and volunteer leaders. The mission of the Cooperative Extension Service in conducting 4-H programs is to assist youth in acquiring knowledge, developing life skills, and forming attitudes that will enable them to become self-directing, productive, and contributing members of society.

I have personally had the opportunity to be involved with 4-H and other vocational education groups since I was a young boy. As a member of the local 4-H club, the Humboldt Hustlers, for 9 years, I enjoyed many great experiences. I was fortunate enough to attend two 4-H Club congresses in Chicago, the 1961 World Agricultural Fair in Cairo, Egypt, and I had the honor of giving the "National Report

to the President" to the late John F. Kennedy in the White House in March 1963.

While not all young people are as fortunate as I was in my 4-H involvement, these youth organizations are still extremely important in the lives of a great number of young people. In 1970, 4-H membership was 3 million, and presently 4-H has nearly 4.4 million members. 4-H serves far more than rural America. Of the over 4 million participants, 46.3 percent live in cities of populations over 10,000 and only 15.8 percent actually live on farms.

Many of the benefits young people receive from 4-H and other programs are the result of the dedication of volunteers. Volunteerism, integral to the American way of life, has been the key to success for all 4-H programs. Last year, over 600,000 4-H volunteer leaders worked directly and indirectly with youth, including 130,000 4-H junior and teen leaders. Passing along the knowledge, skills, and enthusiasm they have acquired through their own 4-H experiences, these young leaders serve as an inspiration to others.

Nine national and regional leader forums throughout the year improve the expertise of volunteers in specific subject areas and serve as a catalyst for innovative program development.

4-H volunteers, supported by the equivalent of 5,500 staff members, donate an average 220 hours per year in preparing for and teaching youth—thus for each hour a salaried staff member spends in 4-H, a volunteer spends 12 hours in 4-H. A study has shown that the average 4-H volunteer drives 300 to 400 miles for 4-H in a personally owned vehicle and spends $40 to $60 on teaching material. The estimated value of the total time volunteers devote to 4-H, plus their out-of-pocket expenses, is over $1 billion annually. This means the 4-H program is very dependent on the services of dedicated volunteers and thus is a very cost-effective program.

Federal expenditures on agricultural research and extension activities are dollars well spent. America gets a return of about 10 times the Federal outlay in the value of volunteer services and contributions that are stimulated by this investment. This does not take into account the future increases in productivity of agriculture and other areas that this research and training will create. This is especially important today because of the great importance of agricultural exports and the reduced rate of increase in farm productivity.

Mr. President, I commend the Cooperative Extension Service in its quest for excellence and salute the many volunteers who have made the 4-H program a tremendous success.

Mr. BURDICK. Mr. President, I want to call my colleagues' attention to certain aspects of the Agriculture, Rural Development, and Related Agencies Appropriations Act as it is contained in this resolution.

The President recommended severe cuts or total elimination of many important programs. The committee has rejected those cuts. One of the most important is for the Extension Service which the President proposed be cut by 60 percent. We restored the funding to $328 million—roughly the same as for this year.

With the work that the Extension Service does in disseminating information to the public, it has touched virtually every family in my State and surely around the country. It's one of the most effective, efficient education tools we have.

We have also restored funding for the Rural Electrification Administration. REA has been instrumental in the development of rural America. It continues to be crucial toward that development and maintenance of a high quality of life for our rural citizens. President Reagan proposed phasing out REA over the next 5 years, raise the interest rate, and assess user fees. Happily, we rejected all of these proposals.

I also want to direct your attention to the conservation programs—many of which the President proposed for complete elimination. He says that the new conservation reserve will take care of all our erosion problems. Well, that simply is not the case. We need to maintain conservation practices on the land that continues to be farmed and ranched. While much of this land is not now eligible for entrance into the conservation reserve, if we don't conserve it, the erosion will be so great that it will be eligible for entrance. This is a result that is not desired or planned for under the Conservation Reserve Program. Therefore, we desperately need these other conservation programs, and I am proud to say that we have restored them.

Mr. President, there is an aspect in this whole budget process that concerns me. It has to do with the sale of loan assets by Government agencies in order to produce savings. The President has proposed it in his budget, and Congress is on the verge of adopting it is some cases.

The Budget Reconciliation Act includes a provision requiring the Secretary of Agriculture to sell some of the notes—or assets—held in the Farmers Home Administration rural development insurance fund. The purpose of this sale will be to realize net proceeds to the Federal Government.

The pending Agriculture appropriations measure includes report language that I offered directing the administration to sell these assets only to purchasers fully capable and willing to service these loans. Adequate servicing of these loans includes the ability to extend additional credit.

About 12,000 loans have been made to rural communities through the rural development insurance fund. Many of these communities are small with few if any paid employees. As a result, these communities look to the Farmers Home Administration for technical assistance and to be a reliable and sympathetic lender interested in resolving any credit problems that may arise.

The Appropriations Committee shares my concern and the concern of many rural communities that the Farmers Home Administration assets may simply be sold—without regard to the needs of borrowers. Direction from Congress is needed to ensure that rural communities do not find themselves at the mercy of entities which purchased the asset because they were the highest bidder, and don't plan or cannot service the loan.

The report language accompanying this legislation directs the administration to require the purchaser of these assets to assume responsibilities beyond just making a profitable investment. Those responsibilities will include the obligation to service these loans—as Farmers Home currently does—and to extend additional credit as may be reasonably required.

The ability to extend additional credit is an essential point because most of the loans the Farmers Home Administration currently makes to finance water and waste disposal systems, for example, are subsequent loans. During 1985, the agency made a total of 783 water and waste disposal loans. Of that number, 440 loans were subsequent loans made to communities that already had received an initial loan from Farmers Home.

In theory, the rural communities whose notes are sold will be able to return to the Farmers Home Administration for additional credit or other assistance. However, in practice, once a community's loan is sold by the agency, the agency will be far less concerned about the financial affairs of the community. Further, if the community requires additional credit, its application for credit from the Farmers Home Administration will be added to the backlog that currently exists and be subject to the availability of limited funds.

Mr. President, many of my colleagues and I have grave concerns about the merits of selling these loan assets. To some extent, however, these concerns can be addressed by providing the Farmers Home Administration borrowers adequate safeguards with regard to loan servicing while assuring them of a reliable alternative source of credit.

The report language accompanying this bill is designed to achieve those objectives.

Mr. President, I appreciate my colleagues' consideration of these matters, and I hope they will support the agricultural section of this legislation.

Mr. INOUYE. Mr. President, I wish to submit for the chairman's consideration proposed language to be made part of the statement of the managers in the conference committee report on the continuing resolution bill, House Joint Resolution 738.

In an effort to provide maximum flexibility to the States while still retaining our strong commitment to the weatherization program, a State shall be permitted to allocate up to 10 percent of its share of the $110,000,000 provided for the weatherization program for administrative costs of the State Energy Conservation Program, the Energy Extension Service or the Institutional Conservation Program, if the following conditions have been met: (1) the weatherization program, when taking into account Exxon funds, is maintained at no less than the FY 1986 level; (2) the State's contribution for the administrative costs of the program to which funds are being diverted is no less than the State's contribution to the program in FY 1986; and (3) the administrative costs of the program to which funds are being diverted does not exceed 10 percent of the total program.

This language has been cleared with Senator McCLURE, chairman, and Senator BYRD, ranking member, of the Subcommittee on Interior of the Senate Appropriations Committee, and Senator RUDMAN. Senators D'AMATO, BUMPERS, and HOLLINGS are cosponsors of this report language.

This language is necessary to ensure that States have the flexibility to use weatherization funds for the administration of other State and local energy conservation programs. This is important to States such as Hawaii that are blessed with ideal weather conditions.

Since the State of Hawaii does not need to use all of its share of these funds for the Weatherization Program, this language allows the flexibility for the use of these funds to administer the other programs that have higher State priority.

Mr. HATFIELD. I understand and I will be most pleased to take this language into the conference of House Joint Resolution 738 and ask that it be included in the statement of the managers. You have my assurance of this.

Mr. MITCHELL. Mr. President, I do not believe it would be productive for the Senate to engage in the undoubtedly extended debate that would be provoked by the introduction of any amendment affecting the Energy Department's High-Level Nuclear Waste Disposal Program.

So I will not offer such an amendment today. I would like to make a brief comment at this time, however, on the funding for high-level nuclear waste disposal which is part of the energy and water development appropriations bill in this continuing resolution.

The fiscal year 1987 energy and water development appropriations bill, H.R. 5162, as passed by the House of Representatives, contains $677.6 million for high-level waste disposal activities, funded through the nuclear waste fund.

That represents a cut of $91.7 million from the level originally requested by the administration.

During debate on H.R. 5162, the House unequivocally rejected an amendment offered by Representative WEAVER which would have entirely deleted funding for site-specific first round activity. The vote was 68 to 351.

That House vote clearly demonstrates opposition to suspending the Department's site-specific activities for the first deep geologic repository. The House vote reflects the fact that the difficult decisions and choices that must be made to deal responsibly with high-level nuclear wastes cannot be continuously put off on one pretext or another.

The fact is that high-level nuclear waste remains a very real problem and its disposal remains a very real Government responsibility. That fact is not reason enough to forge ahead with an unsound program. But neither is it an adequate cause for piecemeal and hasty elimination of individual program elements.

When the Senate Appropriations Committee marked up the bill, it cut the administration's funding request for all Energy Department nuclear waste programs by about half, to a level of $380 million.

The report explaining that action, Senate Report 99-441, says in part that the reduction from the administration's request—

• • • is to be applied against the entire program effort including site-specific activities for the first and second waste repositories and site-specific work at a monitored retrievable storage facility which is neither authorized nor funded.

In other words, it is clearly the intention of the Senate committee that the cuts which must be made should be made across the board, not applied selectively to one or another element of the nuclear waste programs.

I read the committee's report and the statutory language of the law as leaving the Department enough latitude to continue its activities in the coming fiscal year to site and construct the one permanent waste repository authorized by the 1982 Nuclear Waste Policy Act, within the restrictions of an overall funding reduction.

The site-specific activities will, of course, share in the funding cuts required by the continuing resolution. But they are not terminated.

While I have misgivings about the wisdom of reducing the funds available to the Department to site and construct the deep geologic repository authorized by the Nuclear Waste Policy Act, this funding level will leave the Department's program in place during the period between the adjournment of the 99th Congress and the convening of the 100th Congress.

I anticipate a vigorous debate in the coming months and years over the Department's implementation of the Nuclear Waste Policy Act.

I intend to play a role in that debate. I represent a State intensely affected by the Department's program.

In addition, I am deeply concerned that the ultimate decision on locating a permanent high-level nuclear waste repository be made with as much care and foresight as lies within the capability of human beings.

The safest possible permanent disposal of this lethal material must be the one driving priority in this program. We owe that to future generations and we must make our decisions in light of that fact.

Mr. GORTON. I would like to make a request of the Senator from Alaska with respect to the DOD appropriations aspect of the bill. The House bill limits fiscal year 1987 expenditures for uniformed services treatment facilities [USTF's] to $114,000,000, which is $19,400,000 below the Senate number. I hope that the Senate will stay with the Senate number; these facilities are providing valuable services to DOD beneficiaries. I understand, however, that the Senator cannot commit to that at this point in the process.

I would like to request, however, that, to the extent the Senate makes an adjustment in the Senate number, it recognize the innovative and cost-effective flat-rate mechanism negotiated in 1984 by DOD and the Pacific Medical Center [PMC] in Seattle, WA. The House Appropriations Committee cited that agreement with approval in its discussion of the escalation of costs for USTF's. I hope that the conferees will recognize that PMC should not be penalized in any way by the imposition of limitation on funding for USTF's.

Additionally, DOD should be encouraged to work with facilities, particularly PMC, to develop payment mechanisms which will result in even greater savings to DOD. In this regard, I understand that PMC has developed an HMO-style capitation proposal which would result in even greater savings to DOD. Apparently, DOD has been reluctant to give this proposal serious consideration. I hope that the conferees will strongly encourage them to do so.

Mr. STEVENS. I understand the concern of the Senator from Washington. I remember his relentless work to facilitate the transfer of the Seattle Public Health Service Hospital, now PMC, to local control in 1981. He and

Senator Jackson spent many hours working with colleagues and the administration on the hospital's behalf. I understand also his obvious pride in the success of that facility as a local concern.

I believe the conferees would share his concern that PMC not be penalized because of the imposition of a spending limit. More importantly, I believe they would share his desire that DOD engage in serious discussions with the hospital with respect to other innovative payment mechanisms designed to result in a cost savings for DOD.

MARINE INTEGRATED FIRE AND AIR SUPPORT SYSTEM (MIFASS)

Mr. DODD. Mr. President, I would like to engage the distinguished manager, Senator STEVENS in a brief colloquy with regard to the Marine Integrated Fire and Air Support [MIFASS] program.

This program is a Marine Corps R&D item, included with other programs in Program Element 26626M. This line is subject to a $7.737M unallocated cut implemented by the Appropriations Committee. My concern centers on the question of how much of that cut will be allocated to the MIFASS program.

The first set of MIFASS equipment of over 230 pieces of hardware has recently been delivered to the Marine Corps and is ready for operational testing on the field. A forced delay in that testing caused by the lack of funds could seriously disrupt this important program. I seek my friend's and colleague's assistance to assure that adequate funds will be provided to carry through the operational testing of the MIFASS program.

Mr. STEVENS. I have reviewed this matter and, first of all, I want to assure the Senator that the figure we marked up for that R&D line was not established with any prejudice against the continuation of the MIFASS program.

I understand the assurance my friend from Connecticut is seeking and what I can tell him is that we will have a very close look at this issue in conference and will attempt to reach an accommodation that will indeed allow the MIFASS test to be completed.

RURAL REFERRAL CENTERS

Mr. D'AMATO. Through December 31, 1985, New York and Massachusetts operated under a waiver of Medicare's prospective payment system. The two States officially came onto PPS on January 1, 1986. As a result of this late entrance into the system, only 9 months of data are available to indicate the impact of the prospective payment system on hospitals in these States.

According to OMB guidelines, eligibility for Medicare reimbursement at rates applicable for rural referral centers is based on data for a full fiscal year. Clearly, data taken before January 1, 1986, is not relevant to the status of these hospitals as they now function under PPS. My provision would allow eligibility in these two States to be based solely on the 9 months that New York and Massachusetts have been participating in the prospective payment system. This technical adjustment is more equitable for hospitals in these two States.

This provision is budget neutral. It involves a slight shift of Medicare funding. At most, the proposal would affect six rural hospitals.

I bring this technical provision to the Appropriations Committee because I have tried every other vehicle possible. The Health Care Financing Administration was unable to correct the inequity, and, although the provision is in the Senate Finance fraud and abuse bill, I have no guarantee that that legislation will move.

The well-being of six rural hospitals should not be thwarted simply because of legislative roadblocks. These hospitals are not being treated equitably. We have an opportunity to correct this injustice.

APPROPRIATION FOR THE AOE—6 FAST COMBAT SUPPORT SHIP

Mr. SPECTER. Mr. President, the AOE-6 fast combat support ship is a Navy program of vital interest to our national security. During the Senate's consideration of the fiscal year 1987 Defense authorization bill, Senators HEINZ, COHEN, and I engaged in an important colloquy in which Senator COHEN indicated that the Seapower Subcommittee of the Senate Armed Services Committee, of which he is chairman, did not authorize the AOE-6 for purely budgetary reasons. Senator COHEN also indicated that if funding for the AOE-6 could be found in conference, he would gladly agree to authorize the ship.

Mr. President, I ask unanimous consent that this colloquy be printed in the RECORD. I also ask unanimous consent that a Department of Defense information paper and a chart that I have put together illustrating the dangerous shortfall in Navy logistical capabilities be inserted in the RECORD.

[Chart not reproducible for the RECORD.]

The need for new logistics ships, and specifically the AOE-6, for the Navy is desperate in light of the Navy's plans for 15 carrier battle groups, a plan that has been endorsed by the administration and Congress.

Before I yield to the distinguished senior Senator from Pennsylvania, Senator HEINZ, I would just urge my colleague the distinguished chairman of the Defense Subcommittee, Senator STEVENS, to fund this important program at the requested level.

Mr. HEINZ. Mr. President, I would once again thank my distinguished colleague from Pennsylvania, Senator SPECTER, for his leadership on securing funding for the AOE-6 in the fiscal year 1987 budget.

This ship is crucial to the operation of our Navy's carrier battle group and will ensure that the underway replenishment mission may once again be accomplished competently and effectively.

I join Senator SPECTER in calling on Chairman STEVENS to find funding in conference for this vital ship.

Mr. STEVENS. Mr. President, the AOE-6 is an important project for the Navy and I agree with both Senators from Pennsylvania that there is a great need for support ships for our carrier battle groups.

The decision not to appropriate funds for the AOE-6 was not based upon an assessment of need. It was based instead upon the fact that the Senate Armed Services Committee did not provide an authorization for this program in the fiscal year 1987 Defense Authorization Act. While the House Armed Services Committee did authorize this ship for fiscal year 1987, there has been no final result on the authorization from the conference committee.

The budget resolution requires a reduction of more that $25 billion from that portion of the President's budget request which is reviewed by the defense subcommittee. It is simply not possible to fund every program requested.

The House-passed continuing resolution includes $499.7 million for the AOE-6. I would say to my friends from Pennsylvania that if funding permits in the conference on the continuing resolution, I would support funding the AOE program.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Alaska for his support for the AOE-6 and for his agreement to support this project if funds can be found in conference.

Mr. HEINZ. Mr. President, I would also like to thank Senator STEVENS for his support for this ship. I am hopeful that funds for the AOE-6 will be authorized and appropriated.

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

[From the CONGRESSIONAL RECORD, Aug. 9, 1986]

AUTHORIZATION OF THE AOE-6 FAST COMBAT SUPPORT SHIP

Mr. SPECTER. Mr. President, I have decided not to propose an amendment to the fiscal year 1987 defense authorization bill to restore full funding for the AOE-6 fast combat support ship because of an understanding I have reached with Senator COHEN, chairman of the Subcommittee on Sea Power and Force Projection.

Mr. President, the amendment would have restored full funding for the AOE-6 which has been requested by the administration

and fully authorized by the House Armed Services Committee.

This logistics station ship is used to resupply the aircraft carrier battle group with fuel, stores, and ammunition. The need for the AOE is significant. While the importance of combatant ships and submarines is obvious, supply ships are often neglected with a resulting loss of logistical capability. Although we cannot fight a war without underway replenishment—for which the AOE-6 is designed—every few days.

Current station ships cannot meet this need because there are too few and they are too old and slow. The Navy currently has 11 station ships for its 13 carrier battle groups. With plans to expand the number of carrier battle groups to 15, the deficit of station ships will reach 4. In addition, 7 of the 11 station ships presently deployed, the AOR's can only cruise at 20 knots, whereas the carrier group routinely sustains speeds of 26 to 30 knots.

Moreover, the AOE-6 is extremely cost effective. According to the Navy and the Department of Defense, the estimated fiscal year 1987 price of the AOE-1 meeting the Navy's requirements as fully as the AOE-6 does should be $665 million. At $612.7 million, the AOE-6 is a modern station ship at a moderate price.

Mr. HEINZ. Mr. President, I would like to commend the distinguished Senator from Pennsylvania [Senator SPECTER] in his efforts to authorized funding for this important combat support ship. Senator SPECTER has already outlined the crucial role this ship must play with the aircraft carrier battle group and the dangerous situation we will face in the event of war with our naval logistics capabilities. I would urge my colleagues to review this program and support the full $612.7 million authorization for this ship.

Mr. COHEN. Mr. President, the AOE-6 is a worthwhile project and there is a significant need for station ships to support carrier battle groups.

Those of us on the Subcommittee on Sea Power and Force Projection of the Senate Armed Services Committee were faced with the unpleasant tasks of making signficant reductions in the Navy's shipbuilding and conversion account. The committee recommended against authorizing the AOE-6 ship to comply with budget constraints. Our decision resulted from an overall assessment of shipbuilding needs and war-fighting priorities.

I would like to provide an authorization for this important program. If funding permits in conference, then I would certainly support authorization for the AOE.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Maine for this agreement to support this project in conference if funds can be found.

Mr. HEINZ. Mr. President, I would also like to thank Senator COHEN for his support for the AOE-6. I am hopeful that sufficient funding can be found in conference.

Service/Agency: Navy,
Appropriation Account: SCN,
Budget Activity: BAS.

Subj: AOE cost information.

Question: What was the cost of construction of the AOE-1 class ships in both actual year costs and as adjusted for 87 dollars?

Answer: The original cost of the FY-1961 AOE-1 constructed at the Puget Sound Naval Shipyard was $63,382,984. This does not reflect two main propulsion steam-turbine units previously purchased for the battleship KENTUCKY and furnished as free-assets. Value of these units is not available.

The estimated FY-1987 price of a duplicate AOE-1 with updated electronics and ordnance suites is $570 million. This price however, does not reflect current Navy construction standards in habitability, environmental protection, surpression of airborne noise, performance margins and safety features. Nor does it include the Collective Protection System (CPS) priced in the AOE-6. Upgrading the AOE-1 estimate to reflect these items would raise the estimated price of a duplicate AOE-1 to $665 million.

Mr. SIMON. Senator MCCLURE, as chairman of the Senate Committee on Energy and Natural Resources I am sure you are aware that the *Central Illinois Light Company* v. *Panhandle Eastern Pipe Line Company* case (FERC docket No. RP82-105-000) has been pending before the Commission for more than 6 years.

Mr. MCCLURE. Yes, I am aware that this case has been pending before the Commission for that length of time.

Mr. SIMON. As I am also sure the chairman of the committee is also aware, it is important to Senator DIXON, Representative MADIGAN, Representative MICHEL, and other Illinois House Members as well as Senator DIXON, and myself and the gas consumers of Illinois that the Commission will soon reach a decision in this matter which has already been pending before the Commission far too long.

Mr. MCCLURE. Yes, I agree. It is appropriate for the Commission to review the pending matter, weigh the evidence and reach a conclusion in this case and issue their decision as quickly as possible in full accordance with the Commission's administrative procedures. Panhandle, CILCO, the other parties to the case and the gas consumers of Illinois deserve a decision by the Commission.

Mr. SIMON. I thank the chairman of the committee and would ask that a similar language be included in the statement of the managers on the conference report.

Mr. MCCLURE. I have no problem with the Senator's request and will do everything possible to include it as he has requested.

INJURY PREVENTION RESEARCH PROGRAM

Mr. GORTON. I rise today today to discuss an issue that has the potential of affecting each one of us in this Chamber, either directly or indirectly. The issue is trauma. Every day, hundreds of people across the country are directly affected by trauma. My State is privileged to have a superior trauma unit. In fact, it is Harborview Hospital, together with the Seattle Fire Department, that pioneered the Medic I Program. Emergency medical response teams, such as Medic I, now operate out of fire departments in many of our Nation's largest cities. The units have contributed greatly to the ability of our health care system to save the lives of many injured people.

The development of programs such as Medic I require extensive research in the development stage. The Center for Disease Control administers a grant program in the research of trauma prevention. At this time, many hospitals and medical schools across the country have submitted grant proposals to CDC for research projects in the field of trauma prevention. Such proposals include: The development of new and more effective ways of identifying prehospital factors and responses which are detrimental to injury recovery and the development of new techniques which will prove more effective in the resuscitation of injured patients, the identification of factors which contribute to the long-term disability of patients, and the development of an educational program to rigorously prepare new investigators in the field of injury research.

Research such as this has the potential to reap incredible benefits—benefits that may at some point benefit every person in this country.

The House, in marking up the Department of Transportation appropriation bill included $10 million for the CDC Injury Prevention Research Program, the Senate did not include any funds for this program. I would like to ask that the distinguished chairman keep my concerns and these points in mind when the two bodies meet in conference. I believe the $10 million this program costs, is a relatively small amount when one weighs the effect that it will have on our ability to save lives.

Mr. ANDREWS. I agree with the distinguished Senator from Washington that the CDC Injury Prevention Research Program has much merit. The House funding level of $10 million covers the second year of a 3-year project, which initially began in fiscal year 1986. This funding does compete with a number of other worthwhile projects and programs administered by the National Highway Traffic Administration. This funding level will be an issue for conference, and I will keep the concerns of the distinguished Senator from Washington in mind.

HANFORD RESERVATION

Mr. GORTON. Mr. President, I would like to engage the chairman in a colloquy about two projects that are important to environmental protection at the Hanford Reservation. Both projects are vital parts of the effort to cleanup Hanford's radioactive waste and protect the people of both Washington and Oregon.

The Appropriations Committee has provided $4 million for the construction design of the N reactor's liquid effluent treatment facility [LETF]. The purpose of the LETF is to remove radioactive materials from effluent

streams generated at the reactor. Currently, the N reactor's radioactive liquid discharge is dumped, untreated, in soil columns at a flow rate of 1,000 to 2,000 gallons per minute during reactor operation. Small amounts of radioactive elements from these soil columns seep into the Columbia River.

The LETF would treat the streams so effectively that demineralized water may be recycled and used in the reactor, radioactive liquid discharges to soil columns would be greatly reduced, and the Department of Energy requirements concerning replacement of disposal to the ground would be fulfilled. Due to the low level of funding requested by the administration for the LETF in fiscal year 1987, however, the facility will not be operational until approximately 1991. Because the Appropriations Committee provided no funding for activities that are designed to extend the operation of the N reactor beyond 1995, the Department is now seeking alternatives to the LETF which could be operational at an earlier date. Can the chairman give assurances that he will support a funding increase of at least $2 million for the LETF, or for an alternative facility if feasible, so the N reactor's contaminating radiocative waste can be handled in an environmentally safe manner as expeditiously as possible?

Mr. HATFIELD. I assure the Senator from Washington that I will work with other conferees to secure an adequate funding level for a treatment facility for the N reactor. I agree with the Senator that it is important to effectively and expeditiously treat the N reactor's waste. It is imperative that we ensure that the Columbia River and the citizens of Washington and Oregon are protected.

Mr. GORTON. Another important element of Hanford's cleanup is the Nuclear Waste Treatment Program [NWTP]. The NWTP is aimed at developing and testing technologies for immobilizing nuclear wastes, and has produced a liquid-fed ceramic melter that recently began waste glassification testing. The NWTP will answer vital questions about the vitrification of nuclear waste, and the ceramic melter is a crucial element in the development of Hanford's high level waste vitrification plant [HWVP]. The HWVP will convert Hanford's high level defense waste to a glass form for permanent disposal. Terminating the NWTP's ceramic melter would significantly delay the permanent disposal of Hanford's defense high level nuclear waste.

The House of Representatives has appropriated $5 million to continue the operation of the ceramic melter. Given the importance of the ceramic melter to the permanent safe disposal of Hanford's defense high level waste, will the chairman assure me that he supports funding this program at $5 million in fiscal year 1987?

Mr. HATFIELD. The House has earmarked $5 million from the Defense Waste Program for the ceramic melter. I assure the Senator from Washington that I will make every effort to continue funding for the ceramic melter within the Defense Waste Program without substantially reducing other important activities.

DOD PROFIT POLICY

Mr. ROTH. Mr. President, a reform I have long been interested in is contained in section 9101 of the fiscal year 1987 Department of Defense appropriations bill, now part of the continuing resolution, which affects the Defense Department's profit policy and procedures.

This section, among other things, reduces the percentage of progress payment from the current level of 80 to 70 percent and directs the use of an earlier set of procedures, Defense Acquisition Circular 76-3, until new profit policy procedures are available.

This section is of interest to me, Mr. President, because the recommendations in the section are primarily based on recommendations from a General Accounting Office [GAO] report I requested in 1984.

In 1984, I asked GAO to analyze DOD's defense financial and investment review [DFAIR]. DFAIR was a study of the Defense Department's profit policy as well as a comparison of profits between defense contractors and commercial manufacturers. DFAIR concluded that profits on defense business were very similar to those of commercial manufacturers except during 1980-83. GAO's analysis of the DFAIR data showed that defense contractors were 35 percent more profitable than commercial manufacturers during 1970-79 and 120 percent more profitable during 1980-83. In addition, GAO's analysis of publicly available data indicates that defense business was substantially more profitable than comparable nondefense firms during the period 1975-83.

DFAIR also concluded that the defense sector has become more capitalized in the last 9 years. GAO analysis shows that defense contractor investment has increased over the time period 1975-83. However, when growth in investment is compared to sales growth, defense contractors' rate of growth of investment lagged substantially behind the rate for nondefense firms. GAO's finding is consistent with the finding of the Logistics Management Institute—a consultant to DOD on the DFAIR.

Most important Mr. Chairman, the DFAIR found, and GAO confirmed, that the DOD's profit policy was yielding 0.5- to 1-percent more profits on DOD contracts than intended. After I received the GAO analysis on DFAIR, I sent a letter to the Secretary of Defense letting him know about the concerns GAO raised in their analysis. I particularly raised the issue of the 0.5- to 1-percent increased profit contractors were making on defense contracts. While I acknowledged that DFAIR admitted the increased profit was unintended, I also emphasized that something had to be done.

I recommended that pending a more detailed analysis of the changes suggested by the DFAIR report, action should be taken immediately to reduce the unintended profit resulting from current DOD profit policy, Defense Acquisition Circular [DAC] 76-23. I then suggested that two approaches would accomplish this reduction.

The first approach would be to rescind DAC 76-23 which would have the effect of causing the policy to revert to that implemented in 1976 by Defense Procurement Circular 76-3. This policy was in place and operated effectively for 4 years. An advantage to this approach would be moving to a policy well known to all elements of DOD and industry. A disadvantage is that it may reduce contractor investment incentives. The second approach would be to retain the current investment incentives but reduce the factors for profit based on cost.

Regardless of the approach, I underscored that it was imperative to stop the continual awarding of profits in excess of that intended while the problem is under study.

Mr. President, I ask unanimous consent that the full text of my letter to Secretary Weinberger be printed in the CONGRESSIONAL RECORD at this point:

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, April 16, 1986.

Hon. CASPAR WEINBERGER,
The Secretary of Defense, Department of Defense, The Pentagon, Washington, DC.

DEAR CAP: I have asked the General Accounting Office (GAO) to review your recently released Defense Financial and Investment Review (DFAIR) study. Based upon its initial evaluation of the study GAO has communicated some preliminary concerns to me. These concerns relate to recommendations made by DFAIR regarding contract financing, return on assets calculations, and changes to the weighted guidelines procedures. The GAO review will be completed some time this summer. Because of the uncertainties and questions that have been raised, GAO believes that no action to change Department of Defense (DOD) policy based on the DFAIR study should be taken at this time. I agree with this recommendation and urge you to wait until these concerns are cleared up before making any DFAIR recommended profit policy changes.

There is another problem, however, that does appear to merit immediate attention. GAO pointed out that the DFAIR report states clearly that the net effect of the profit policy change made by Defense Acquisition Circular (DAC) 76-23 was to increase markup (profit) by .5 percent to 1 percent and that the increase was not ex-

pected. One of the report's recommendations is that a revised "Markup policy should yield results which are on average .5 to 1 point lower than results achieved under DAC 76-23." The report also recommends that R&D and service contracts no longer be considered as a separate category but should be included under the revised weighted guidelines for all contracts.

In a recent report on DOD profit policy, NSIAD 85-55 dated March 14, 1986, GAO concluded that from its preliminary analysis, it was unable to conclude, as DFAIR does, that implementation of any of the alternatives would achieve the goal of yielding markup results which are on average .5 to 1 point lower than the results achieved under DAC 76-23. The GAO report did concur with DFAIR's analysis that DAC 76-23 increased markups (profits) significantly. The .5 to 1 point increase as cited in the report is certaintly within the realm of possibility.

DAC 76-23 has been in effect since March 1980. The DOD annual summary of individual procurement action reports shows that prime contract awards totaled $129.1 billion in 1984. The procurement funds authorized in the DOD budget for 1985 was $131.4 billion and $138.3 billion for 1986. DFAIR concluded that the .5 to 1 percent increase caused by DAC 76-23 was unintended. Even a small percentage (.5 to 1 percent) of DOD's annual contract awards represents a significant amount of profit, more than intended, being awarded as long as DAC 76-23 stays in effect. The current level of DOD contract awards is well over $100 billion. Therefore, by its own report, DOD is annualy negotiating with contracts somewhere between $500 million and $1 billion more in profits than the DFAIR report concludes that it should.

Pending a more detailed analysis of the changes suggested by the DFAIR report, action should be taken immediately to reduce the unintended profit resulting from the implementation of DA 76-23. Two approaches would accomplish this reduction. One approach would be to rescind DAC 76-23 which would have the effect of causing the policy to revert to that implemented in 1976 by Defense Procurement Circular 76-3. This policy was in place and operated effectively for four years. An advantage to this approach would be moving to a policy well known to all elements of DOD and industry. A disadvantage is that it may reduce contractor investment incentives. Another approach would be to retain the current investment incentives but reduce the factors for profit based on cost. Either way it is imperative to stop the continual awarding of profits in excess of that intended while the problem is under study.

Sincerly yours.

WILLIAM V. ROTH, Jr.,
Chairman.

Mr. President, Secretary Weinberger responded to my letter saying that in April 1985, he reduced the customary progress payment rate for larger businesses from 90 to 80 percent. He further explained that this reduction would mean more financing would have to be provided by the contractor, and interest is not an allowable cost on defense contracts. It was for these reasons that he believed it was not necessary to take the actions I suggested in my earlier letter.

Mr. President, I ask unanimous consent that the letter to me from Secretary Weinberger be printed in the CONGRESSIONAL RECORD.

I asked GAO to study these decisions to see if they went as far as my recommendations to alter DOD's profit policy. GAO responded that the action to reduce progress payments to defense contractors from 90 to 80 percent was inadequate.

GAO testified in a congressional hearing that the mere act of reducing the progress payment rate by itself will not necessarily decrease contractor profits. As the profit policy stands currently, there is nothing in the regulations that would prevent contractors from passing this increased financing cost on to the Government by negotiating higher profits. This conclusion, GAO continued, is supported by the 1983 report of the Office of the Under Secretary of Defense for Research and Engineering which recognizes that although some short-term savings may result from a reduction in progress payments, price increases would cause outyear outlays to be substantially higher.

In order for a reduction in progress payments to reduce profits, a mechanism would have to be established in the profit policy to control negotiated profits when progress payments percentages are changed. Only if DOD's profit policy did not allow negotiated profits to rise, would the lowering of progress payment rates reduce contractor profits.

Mr. President, it is for these reasons given by GAO that I am pleased the Appropriations Committee put these recommendations in the bill. The recommendations will direct the DOD to use an earlier set of procedures for profit policy. The recommendations will reduce progress payment rates 10 percent from the current 80 percent for businesses of a certain size down to 70 percent starting in fiscal year 1987. And finally, the recommendations will require the DOD to follow procedures prescribed by Defense Production Circular 76-3 until new procedures are available.

Mr. President, through the successful implementation of these recommendations primarily based on the GAO report, the committee estimates that approximately $1 billion could be saved in fiscal year 1987 outlays.

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

THE SECRETARY OF DEFENSE,
Washington, DC, May 7, 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of April 16, 1986, on preliminary GAO findings presented to you on DoD's Defense Financial and Investment Review (DFAIR). The GAO observed that DFAIR had disclosed that the net effect of a DoD profit policy adopted in 1980 under Defense Acquisition Circular (DAC) 76-23 produced an unintended increase in contract mark-up of .5 to 1.0 percentage points. You were concerned with GAO's opinion that the profit policy revisions recommended by DFAIR would not have the effect of lowering profit by an equal amount. You, therefore, urged me to delay implementing DFAIR's recommendations until your concerns were cleared up, but you also proposed immediate action to rescind DAC 76-23 or offset its impact.

The GAO is correct in that DFAIR reported an unintended enhancement in contract mark-up of .5 to 1.0 percentage points due to DAC 76-23. However, GAO does not give full consideration to actions that have previously been taken by DoD to bring our policies more in line with intended results. In April 1985, I reduced the customary progress payment rate for large businesses from 90 percent to 80 percent. The DFAIR analysis demonstrated that this policy change would have the same impact on reducing contractor profits as eliminating DAC 76-23. This is because more financing would have to be provided by the contractor, and interest is not an allowable cost on defense contracts. For this reason, I do not believe it is necessary to take the immediate actions you suggested.

The DFAIR project, completed last May, contained several important reforms for better integrating our progress payment and profit policies. This included rescinding DAC 76-23, as you have suggested, and completely overhauling the method used by contracting officers to determine contract mark-up. We have already delayed implementing DFAIR's recommendations for almost a year while we awaited the results on our request to the Packard Commission to review the report. It now appears that they will not include it within the scope of their review. Therefore, we are now taking the appropriate steps to act on the DFAIR recommendations.

I sincerely welcome your active involvement in this important area. If you desire, members of my staff would be happy to brief you more fully on the DFAIR project and the various reforms that we plan to undertake.

Sincerely,

CAP.

Mr. CHILES. Mr. President, I planned to offer an amendment to the continuing resolution which would reauthorize funds for the Office of Information and Regulatory Affairs as well as provide amendments to the Paperwork Reduction Act of 1980.

In 1980, I sponsored the Paperwork Reduction Act. That law established procedural requirements within the executive agencies designed to increase the efficiency of managing information resources and insure the public that the Government periodically check the need for information requests. An Office of Information and Regulatory Affairs was created within OMB to review agency conformance to the standards of the act and to serve as a focal point for accountability to the Congress and the public.

The House, in their appropriations bill, has taken action to eliminate all funds for OIRA. It has included language in its bill which reads:

• • • that none of the funds made available by this act shall be available to fund activities of the Office of Information and Regulatory Affairs.

Given the provisions of the Paperwork Act, the inability of the Director to perform statutorily assigned responsibilities would have serious impacts on the operating programs and legal responsibilities of the agencies. In brief, if the House elimination of funding prevailed, there would be substantive effects not only upon the requirements of the Paperwork Act, but upon many other laws as well.

Consequently, Mr. President, my view is that the House has, in effect, legislated on their appropriations bill.

The Senate bill restores funding and strikes the related language. This difference will be an issue for the conference.

However, a reason given for the House action was that the authorization associated with OIRA's activities has expired and has not been reauthorized. In the 98th Congress, the House passed such a reauthorization bill. The Senate Committee on Governmental Affairs did likewise, but the full Senate did not. This Congress, the Senate Governmental Affairs Committee has passed and reported similar reauthorization language both as part of a larger bill—title VI of S. 2230, and as a separate bill—S. 2887.

The purpose of my amendment was to respond to the House language and concern that there should be no funding until there is an authorization. My intent was to take the Governmental Affairs Committee passed language and amend it to the bill before us.

My view was that the Senate's position in a potential conference disagreement would be strengthened if this language approved by the Senate Authorizing Committee and designed to make activities under the act more accountable to Congress, were coupled with the appropriations for OIRA. The chairman of the Governmental Affairs Committee is in agreement with and shares my desire to amend this act.

However, I agree my amendment would legislate on this bill. It is a response to the House which I feel has legislated on their bill.

I understand the distinguished floor manager's desire to move expeditiously. I also understand why he intends to raise points of order to move things along.

My understanding is that the present difference between the bills is grounds to permit the conference to deal with authorizing and amendatory language to the Paperwork Reduction Act.

I would like to ask the distinguished chairman of the Appropriations Committee and the distinguished chairman of the Subcommittee on Treasury, General Government, and Postal Services if their understanding of the situation is the same as mine?

Let me say that both I and the House Authorization Committee are presently working with the administration to come to an agreement on the issues which have surrounded the Office of Information and Regulatory Affairs. The intent is to bring this agreement to the conference on the language difference I have outlined.

Mr. ROTH. I want to voice my support for what Senator CHILES is trying to do.

I would support an attempt to amend the continuing resolution with the language of the bill reauthorizing OIRA and making certain other changes in the Paperwork Reduction Act that has twice passed my committee. I have previously indicated my support to the two distinguished Appropriations Committee chairmen—Senator HATFIELD and Senator ABDNOR.

I think this amendment would be an appropriate response to the House language in their bill. I will work with the committee to conference the differences which presently exist.

I want to reiterate what Senator CHILES said about the efforts that are presently going on to work out an agreement between the administration and the House Authorizing Committee. That effort is still going on and I hope agreed upon language reauthorizing OIRA and making the other Paperwork Act improvements in our bill can be brought to the conference on this continuing resolution.

I want to thank the Senators HATFIELD and ABDNOR for their support and cooperation in this effort.

Mr. HATFIELD. I understand what the Senator has said. I appeciate his interest to expedite the bill before us.

I believe his understanding is a reasonable one. If the Senate chairman of the Authorizing Committee and the chairman of the House Authorizing Committee also agree with the Senator's understanding, then his understanding becomes even more reasonable.

I will support the Senator from Florida's effort to achieve the stated objective in conference.

Mr. ABDNOR. Let me say I appreciate the Senator's willingness to move this bill.

I support what the Senator is trying to do. I think his expectation for the conference is reasonable.

I will work with him and the chairman of the Governmental Affairs Committee, Senator ROTH, to reauthorize funding for the Office of Information and Regulatory Affairs and amend the Paperwork Reduction Act.

CUSTOMS SERVICE FUNDING REGARDING ENFORCEMENT OF STEEL IMPORT STABILIZATION PROGRAM

Mr. GLENN. Mr. President, I wish to clarify the intent of the Appropriations Committee regarding funding for the U.S. Customs Service, and the impact that these funds will have on enforcement of the Steel Import Stabilization Act.

The President's budget proposed to reduce the Customs Service by 777 positions in fiscal year 1986 and an additional 770 positions in fiscal year 1987. Many of these reductions would be in the ranks of custom inspectors and import specialists—our first line of defense against illegal shipments of foreign steel into this country. Without these trained and capable public servants, the President's Steel Import Stabilization Program isn't worth the paper it is printed on.

Now let me take a few minutes to review the intent and purpose of the 1984 Steel Import Stabilization Act—because the Customs Service plays an essential role in implementing this program. The act was proposed by the President and passed by Congress, and recognized the inability of the domestic steel industry to be internationally competitive due to the Federal budget deficit, an overvalued dollar, and serious injury from imports of foreign steel. The import problem was aggravated by the use of subsidies, dumping, and other unfair and restrictive foreign trade practices. The act called for implementation of a national steel policy with the goal of limiting import penetration to 20.2 percent of the U.S. market. Pursuant to this 1984 act, the President negotiated bilateral arrangements for steel import restrictions with 17 countries and the European Community. These agreements cover approximately 80 percent of steel imports.

Since the program was implemented, steel imports have declined from 25.2 percent of the domestic market in 1985 to 23.2 percent so far in 1986. This is an improvement, but still far short of the goal set by the President and Congress. Foreign steel is still a serious problem, and strong enforcement of the voluntary restraint agreements is absolutely essential to ensure the success of our national program.

I am pleased to see that the Appropriations Committee rejected the budget proposals of the administration for the Customs Service, and has provided funding to restore the 1,547 positions. Will the distinguished chairman of the subcommittee explain how the $760 million committee recommendation will enhance the Customs operations?

Mr. ABDNOR. I am pleased to confirm this information for the distinguished Senator from Ohio. The committee recommendation of $760 million for Customs salaries and expenses makes several personnel enhancements for Customs operations possible. Included is funding for 314 new inspectors, and 108 new import specialist

positions to improve Customs commercial operations in key ports around the Nation, as well as other new positions to enhance drug interdiction efforts and other Customs law enforcement.

Mr. GLENN. I thank the Senator, and I assume that the additional inspectors and import specialists will help bolster our Nation's enforcement of the Steel Import Stabilization Program, as well as import programs for textiles and other goods?

Mr. ABDNOR. The Senator from Ohio is correct. The committee recognized the needs of the Steel Import Stabilization Program in deciding to restore positions in the inspection and import specialist areas.

Mr. GLENN. Thank you. I appreciate the committee's initiative in this area, because the import specialists and inspectors play a primary role in enforcing the voluntary restraint agreements on steel. And let me ask the subcommittee's distinguished ranking member, is it your understanding that if the drug bill is passed and funded, that this will free up additional inspector positions for use in fighting against customs fraud at key ports around the Nation?

Mr. DECONCINI. The Senator from Ohio is correct. The drug bill should free up resources for use in other high priority areas of Customs enforcement, including the Steel Import Stabilization Program and other commercial operations.

Mr. GLENN. I thank the Senators, and I appreciate their leadership on this issue in the Appropriations Committee.

Mr. METZENBAUM. I want to join my friend and colleague from Ohio in thanking the Appropriations Committee for their work on this issue, and in recognizing the importance of the Customs Service in enforcing our National Steel Import Stabilization Program.

As recognized by the committee, the U.S. Customs Service does not currently possess the size of staff necessary to effectively administer and enforce all of the important programs in its jurisdiction. Further cuts, as proposed by the administration's fiscal year 1986 budget, would seriously erode the Steel Import Stabilization Program as foreign producers exploit the absence of an effective enforcement mechanism.

There is already evidence of efforts by foreign producers to circumvent the voluntary restraint agreements, VRA, either through shifting the product mix away from products covered by the VRA's, by classifying certain finished steel products as semi-finished; or by misclassifying imports into tariff categories that are exempted from the Import Relief Program.

While the steel industry has notified Customs of instances where circumvention of this program has taken place, Customs has been unable to act on these complaints vigorously and completely due to manpower shortages.

Specialty steels are complex alloys and, therefore, the manpower problems at Customs are especially serious because skilled personnel are required at all major ports to analyze chemical composition and product form. Unfortunately, the administrration proposed some of its most substantial reductions with respect to these highly skilled personnel. If the proposed cuts were implemented, the enforcement of the steel program will be further weakened and it will signal to our trading partners that they can circumvent our import relief programs with impunity.

So I join the senior Senator from Ohio in commending the Appropriations Committee for restoring funds for the U.S. Customs Service. We need to get tough at the borders and enforce these steel agreements if we want to help preserve the steel industry and put our people back to work.

Mr. BYRD. Mr President, I want to associate myself with the remarks of my colleague from Ohio, and commend him on his leadership on this issue. On March 20, 1986, I wrote to the chairman of the Finance Committee, Senator PACKWOOD, to request that his committee hold hearings on the administration's proposed reduction of the Customs Service. Senator PACKWOOD graceously agreed to hearings, which were held on May 12.

Steel imports are—and remain—a serious problem. Imports in July alone captured 27 percent of the American market. If the President's program to limit steel imports to 20.2 percent of the U.S. market is to have any hope of success, the program must be policed by Customs officers with the experience and training required to identify the different types of steel and their origins. Administration cut-backs in the Customs Service are an open invitation to abuse of a program on which American jobs—and a vital defense industry—depend.

Senator GLENN has a solid record of concern and action on behalf of the steel industry. His efforts to make certain that the Customs Service has the expertise it needs are a natural outgrowth of that distinguished record. Again, I commend him for his initiative on this important issue.

ST. ALBANS REMOTE ADJUDICATION CENTER

Mr. LEAHY. When we were considering the continuing resolution, I was prepared to offer report language directing the General Services Administration to find either new or existing space for the proposed expansion of the Immigration and Naturalization Service's Eastern Remote Adjudication Center in Franklin County, VT.

I was assured by both the Chairman, Senator ABDNOR, and the ranking minority member, Senator DECONCINI, that this language would be accepted during the markup. However, during that mark-up, Senator HATFIELD made a very strong appeal that no amendments and no report language be offered.

He indicated that the language that had been agreed to would be included in the statement of the managers on the conference report.

The report language is as follows:

The Committee is aware that the Immigration and Naturalization Service's Eastern Remote Adjudication Center (RAC) located in St. Albans, Vermont, will be expanded this spring. The Immigration and Naturalization has directed the General Services Administration to locate either new or existing space for the expansion in Franklin County, Vermont. GSA began the search this summer and is now looking beyond Franklin County. The Committee is aware that existing space is available in Franklin County and that developers are willing to construct a facility. The Committee is also aware that because of unreasonable delays on the part of GSA, it is now impossible for construction to begin this fall.

Given the fact that Franklin County traditionally has high unemployment and that Franklin County workers at the RAC have proven to be both highly skilled and dedicated employees and given the fact that GSA has not given Franklin County a fair and equitable review, the Committee directs GSA to find either new or existing space for the RAC in Franklin County, Vermont.

With regard to this language, I would like to ask the chairman and the ranking member of the Treasury, Postal Service Subcommittee two questions.

First, will they make every effort to include this language in the statement of managers on the conference report on the continuing resolution?

Second, even though the language was not included in the committee report on the continuing resolution and even if it is not included in the statement of the managers on the conference on the continuing resolution, should the General Services Administration consider this language binding on it?

Mr. ABDNOR. The Senator from Vermont has stated the situation correctly. This language would have been accepted were it not for the extraordinary nature of the markup. I will make every effort to include this language in the statement of the managers on the conference report. Even if it proves to be impossible to include this language in that conference report, the General Services Administration should consider this colloquy the equivalent of report language.

Mr. DECONCINI. I agree with my colleague, the Senator from South Dakota and the chairman of the subcommittee. The committee directs that this facility not be moved from Franklin County, VT, for the reasons stated by the Senator from Vermont.

Mr. LEAHY. I want to thank the chairman and the ranking member of the Treasury, Postal Service Subcom-

mittee for their support on this matter. I have always appreciated their courtesy on matters such as these.

CONTINUATION OF THE INTERAGENCY COMMITTEE ON SECURITY EQUIPMENT

Mr. HOLLINGS. Mr. President, the State Department security bill authorized $4.2 billion for enhanced security of American embassies and other facilities overseas. The Urgent Supplemental Appropriation Act contained $13 million for enhanced security for Capitol Grounds. These actions clearly evidence the concern of the Congress that adequate security be provided for all American citizens at home as well as abroad.

In this context, I am concerned that the General Services Administration [GSA] has proposed eliminating funding on October 1, 1986, for the Interagency Advisory Committee on Security Equipment [IACSE], which provides oversight of the ongoing effort of 16-member agencies to ensure that economical, reliable, tested, and certified security equipment is purchased and used within the Federal Government.

The GSA is the agency charged with the responsibility of providing protective services for all Federal facilities under its control—and further, responsible for identifying for other departments and agencies those items that may be procured in accordance with the general Federal supply services schedule. In this regard, the GSA acts as sponsor for IACSE. This committee is specifically chartered to provide a forum for the exchange of information, data, issues, requirements, specifications, and problems related to the identification, procurement, test and supply of security equipments that provide common need in the operation of Federal Government facilities and activities.

Mr. President, I have conferred with the distinguished chairman, Senator ABDNOR, of the Treasury, Postal Service Subcommittee, as well as the ranking member, Senator DECONCINI. I found that they share my concerns and are agreed that GSA must continue its role as head of IACSE, that funding of $1.6 million still remains available, and that such funds are not to be utilized for other GSA purposes.

Mr. ABDNOR. Mr. President, I appreciate the distinguished junior Senator from South Carolina bringing this matter to my attention. If we would have been able to, his statement would have been in our report and I endorse it and expect GSA to maintain this vital committee.

Mr. DeCONCINI. Mr. President, I totally share the chairman's endorsement and fully expect GSA to continue IACSE.

Mr. BROYHILL. Mr. President, I rise to engage the Senator from South Dakota in a colloquy.

Mr. ABDNOR. I am pleased to oblige the Senator from North Carolina.

Mr. BROYHILL. I appreciate the chairman's indulgence and the opportunity to highlight areas of great interest to this body and the State of North Carolina in the Treasury, Postal Service, and General Government appropriations bill now embodied in House Joint Resolution 738, the continuing resolution for fiscal year 1987. Let me first commend the distinguished chairman and members of the subcommittee on their efforts to craft a bill that provides funding necessary to maintain the programs and activities of Federal departments and agencies within the jurisdiction of the subcommittee. This bill reflects a recognition of the need to exercise greater fiscal restraint and responsibility at a time of reduced resources and unlimited demand for them.

Mr. ABDNOR. I thank the Senator for his kind remarks.

Mr. BROYHILL. You and members of your subcommittee have restored funding to continue essential programs and operations for one of our Nation's oldest and most important Federal entities: The U.S. Customs Service. The administration has proposed to reduce the Customs Service personnel level by 1,547 positions below the number provided in 1986. This reduction would have impaired the ability of the Customs Service to carry out its mission in the areas of drug interdiction, border enforcement, processing of imports and duty assessment, detection of fraudulent activities. In addition, this would have severely impacted activities related to the control and regulation of carriers and movement of commodities between the United States and other nations, the exposure of illegal international trafficking in arms, munitions, and currency, and the protection of American consumers, industry and workers against unfair competition from foreign manufacturers.

In a recent series, the Washington Post described the problems facing the Customs Service. The series focused on the growth in workload at a time of reduced funding and calls for further reductions. The conclusion of this article: While Customs is continually being assigned more and more vital tasks by Congress and the administration and demand for its services increases, the impact of declining funding levels has weakened appreciably its ability to fulfill even its basic mission, to say nothing of its capacity for responding to new demands.

Mr. ABDNOR. I am aware of the article.

Mr. BROYHILL. Let me concentrate for a moment on one essential element of the Customs Service's mission: Protection of American consumers, industry, and workers against unfair competition from foreign manufacturers. North Carolina has a high concentration of the Nation's fiber, textile, and apparel production capacity. Taken together, this industry group is besieged by imports that threaten its survivability and place at risk the job security of over 2 million workers and the financial well-being of their families. These industries are being harmed by deceptive practices such as fraudulent labeling designed to disguise the true origin and make of foreign products or to avoid having them counted against existing quotas contribute to the further decline of these domestic industries.

The Customs Service plays a critical role in the enforcement of agreements imposing quotas or other trade restrictions. In my opinion, effective enforcement requires the assignment of manpower necessary to carry out the task. Beyond this requirement, it demands of our Customs personnel on the front-line constant vigilance, knowledge, and intuition as well as product familiarity. Our ability to ensure enforcement is only as good as our commitment to provide what is necessary to achieve it. Unless we are willing to provide the resources needed to effectively enforce our laws, then they are meaningless and useless to us. You understand this, Mr. Chairman, and I appreciate your recommending additional Customs personnel, some of whom will help expose and combat deceptive practices and ensure more vigorous enforcement of fiber, textile, and apparel quotas.

Mr. ABDNOR. I appreciate your support of the committee's recommendations.

Mr. BROYHILL. Let me dwell for a moment on the Customs Service's proposed plans for its district office in Wilmington, NC. Consistent with its plan for reductions in personnel and operations, the Customs Service has proposed to eliminate its district office in Wilmington. Under this plan, personnel and functions at this office would be consolidated with existing operations in other States. The Customs Service's justification for this proposed action hinges on its assertion that the Wilmington office has experienced a significant decrease in its workload as a result of a precipitous decline in the volume of imports and exports. Because of this alleged falloff in workload, Customs believes that it is no longer cost-effective to maintain the Wilmington office and that these resources should be merged with existing operations.

Mr. ABDNOR. This comports with my understanding of the Customs Service's justification for this proposed action.

Mr. BROYHILL. I would submit to this body that if the Customs Service purports to base its action on a decline

in imports and exports at the Port of Wilmington, then the facts suggest otherwise and force a different conclusion. For example, between 1982 and 1985, total gross tonnage of international cargo—imports and exports—at the Port of Wilmington increased by 8.68 percent. For the same period, the total dollar value of that cargo rose by 8.26 percent. Clearly, these facts do not support the Customs Service's contention that imports and exports have declined or that demand for its services has diminished.

Mr. ABDNOR. Your point is well made.

Mr. BROYHILL. The Port of Wilmington is fast becoming a hub of international trade and commerce. Ships from over 200 foreign countries call at this port and carry to our shores products of every color, shape, and size to meet every need and suit every taste. Similarly, North Carolinian industries bring to the port their products—agricultural products such as tobacco, food products, furniture, textile machinery, and textile products—for shipment to overseas destinations. U.S. exports like these help create new jobs. In fact, the International Trade Administration estimates that for every $1 billion in export sales 25,000 jobs are created or dependent. On overseas sales totaling $2.9 billion in 1982, 73,315 jobs were either created or dependent. In 1985, on exports sales of $3.1 billion, 79,375 jobs were created or relied. Between 1982 and 1985, over 6,000 new employees were added to the job rolls or kept their jobs. On the average, an 8-percent increase in the number of new jobs created or retained was noted for this same period.

Steady growth of exports and imports makes necessary the provision of adequate Federal resources to meet increasing workload demands in activities such as processing and inspection that contribute to enforcement. The growing economy of North Carolina depends on and requires the full range of available services and assistance the Wilmington office provides. I am most grateful to you, Mr. Chairman, for your help in keeping the Wilmington office open for business. I assure you that your efforts are noted with appreciation by affected businesses, the State, and its residents.

Mr. ABDNOR. I thank the gentleman.

Mr. STEVENS. Mr. President, will the distinguished chairman of the Appropriations Subcommittee on Commerce, Justice, and State, the Judiciary, and related agencies yield for a question?

Mr. RUDMAN. Mr. President, I yield to the distinguished senior Senator from Alaska for a question.

Mr. STEVENS. The committee did not agree with the administration's proposal to terminate new activity and transfer portfolio servicing functions of the National Marine Fisheries Service Financial Assistance Program to the Department of Commerce Office of Grants and Loans Administration, but did not restore $656,000 to fund these services in the NOAA budget. Is it the intent of the committee that NOAA continue these operations, but that the funds be absorbed within existing administrative funds?

Mr. RUDMAN. Yes, that is correct; funds for administration of the financial services programs are intended to come from NOAA's existing funds for executive direction and administration.

Mr. STEVENS. I thank the chairman for his answer.

PRODUCT QUALITY AND SAFETY ACCOUNT

Mr. KERRY. Mr. President, I want to take a moment to address a concern that I have about the product quality and safety account in the NOAA budget. As the manager of the bill knows, the committee has reduced the program's funding in this bill from a level of $5 million last year to $3 million for fiscal year 1987. I do not want to take up the matter of the reduction in funding, but instead I want to raise what I think might be an unintended byproduct of that cut.

As the chairman knows, the PQS account is the major source of funding for several regional National Marine Fisheries Service regional laboratories. One of those labs, serving the Northeastern States, is located in Gloucester, MA. I think it is important to emphasize the importance of this lab to the fishing industry in the entire Northeast region. The type of research done at the Gloucester Lab has resulted in more efficient harvesting, processing and marketing of fishery products. I believe that these facilities are necessary to realize the optimum utilization of our domestic fisheries resources.

Mr. RUDMAN. Mr. President, I share the Senator from Massachusetts' interest in continuing the important role of our regional labs. The Gloucester Lab, which as the Senator points out, functions as the research and development center for the entire Northeast, has been instrumental to the economic stability of our region's fishing industry.

Mr. KERRY. My concern is that the cut in funding might result in one of the regional labs taking an inordinate share of the burden of the shortfall. Can the chairman tell us how the managers of the bill would want to have that reduction made?

Mr. RUDMAN. Mr. President, it is the manager's intention that funds appropriated under the Product Quality and Safety Program should be distributed among facilities in proportions substantially the same as funds appropriated in fiscal year 1986 for that program, consistent with the direction of the committee in Senate Report No. 99-425.

Mr. KERRY. I thank the chairman for his consideration of this matter.

Mr. COHEN. Mr. President, it is my understanding that the Commerce, Justice, and State appropriations bill contains $1,000,000 in fiscal year 1987 funding for fish oil research at the National Marine Fisheries Service seafood laboratory in Charleston. These funds are to be used to continue the program to refine high quality fish oil as test materials for medical researchers investigating the dietary health benefits of fish oil and Omega-3 fatty acids contained in seafood.

The Maine sardine industry recently worked out an agreement with the Gloucester Laboratory of NMFS to perform an analysis of the Omega-3 content of fresh herring and canned sardines over the next year. Because of possible funding reductions facing the Gloucester Lab, the industry is concerned that this project may not be completed this year as agreed.

Mr. President, Omega-3's are a remarkable fatty acid compound found in marine fish oils from such species as herring and menhaden. Three studies published by the New England Journal of Medicine in May 1985, and other recent research have linked the consumption of Omega-3's in seafood to reductions in the amount of cholesterol in the blood and a reduced incidence of fatal heart disease.

The Maine sardine industry needs its omega-3 work to be done during the next year. This will enable it to better inform consumers of the health benefits of sardines. This will also permit the industry to begin to compile the research findings necessary to help it decide whether to pack its product in herring oil once the Food and Drug Administration has given the go-ahead to do so.

Can I be assured by the distinguished chairman of the subcommittee that if the fiscal year 1987 appropriations are insufficient to permit the Gloucester Lab to complete its oil project for the sardine industry, $50,000 to $100,000 of the Charleston Laboratory's fish oil research will be allocated to that project?

Mr. RUDMAN. Yes, if funding reductions prevent the Gloucester Laboratory from finishing the Maine sardine industry's project, it is the committee's intention that $50,000 to $100,000 of Charleston's fish oil research be devoted to the sardine project. Does the distinguished ranking majority member of the subcommittee agree?

Mr. HOLLINGS. I agree with your statement, Mr. Chairman.

Mr. COHEN. Thank you, Mr. President. I appreciate the committee's understanding of the importance of this work and of the potential benefits to

the consumers of Maine's versatile and delicious sardines and herring products.

NATIONAL BUREAU OF STANDARDS FUNDING IN CONTINUING RESOLUTION

Mr. GORTON. Mr. President, I would like to discuss the continuing resolution's assumptions about funding for the Department of Commerce's National Bureau of Standards. I am interested specifically in funding levels for the Bureau's Center for Fire Research, Center for Building Technology, Institute for Computer Science and Technology [ICST], and Cold Neutron Research Facility.

The administration's fiscal year 1987 budget request includes proposals to eliminate the fire and building centers, reduce by about half funding for ICST, and begin development of a Cold Neutron Research Facility at the Bureau. Last year, Mr. President, the same set of proposals was rejected by the Congress. I believe that the actions of the Congress were taken without prejudice to the cold neutron initiative; no Member has questioned the potential scientific value of the research facility. The cold neutron initiative was rejected because the administration's proposals to eliminate the fire and building centers and to cut ICST in half were unacceptable to the Congress. These programs are among the Bureau's most valuable and cost-effective programs, and the administration's arguments that the services could and should be assumed by the private sector, and in the case of the two centers, State and local governments, are not valid, as I have argued on many occasions on this floor, in hearings on the Bureau's budget, and in meetings with administration officials.

I was disappointed to learn that the administration's fiscal year 1987 request included this same set of proposals. I expressed to the Department of Commerce my concern that funding for the Cold Neutron Research Facility would not be provided by the Congress as long as the administration persisted in proposing to eliminate the fire and building centers and half of ICST. I introduced authorizing legislation (S. 2664) which restored funding for the centers and ICST and prohibited expenditures for the Cold Neutron Research Facility. S. 2664 was approved unanimously by the Commerce Committee.

Concurrently, Mr. President, I negotiated with the administration in an effort to resolve this situation. After several discussions, we reached an agreement, subject to the approval of the Congress. Simply stated, I agreed to accept small cuts to the two centers and ICST, along with small cuts to other Bureau programs, and to support the appropriation of $6.5 million for the Cold Neutron Research Facility in fiscal year 1987. In return, the administration has agreed not to propose further cuts to the centers or ICST in the 1988 or 1989 budget submissions. I have a letter stating the details of this agreement from the Office of Management and Budget that I will enter into the RECORD at the conclusion of this discussion. The agreement does not change the overall funding level for the Bureau.

The Senate Appropriations Committee's reports on the Commerce, Justice, State appropriations bill (H.R. 5161) and the continuing resolution assume full restoration of proposed cuts to the fire and building centers and ICST no funding for cold neutron. I intend to amend my authorization bill to reflect the agreement I have described, and I ask the distinguished chairman and ranking member of the Commerce, Justice, State Subcommittee if this agreement can be reflected in the continuing resolution.

Mr. RUDMAN. The continuing resolution provides $123,953,000 for the National Bureau of Standards. The House-passed resolution provides only $113,964,000. I can assure the Senator from Washington that, if the House agrees to the Senate's funding level for the Bureau, I will be happy to endorse the Senator's proposal as the position of the Senate in conference. If, however, the final funding level is below the Senate level, I am not certain that the specific levels for programs will be in accordance with the Senator's proposal, although I intend to support his proposal in conference.

I have been a strong supporter of Bureau programs as chairman of the Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies. I am pleased that an agreement has been reached to avoid dealing with the short-sighted reductions consistently proposed by the Office of Management and Budget, and I look forward to working with the Senator from Washington on these issues in the future.

Mr. GORTON. I thank the chairman. I would hope that, if the agreement is upheld in principal by the continuing resolution, the administration will uphold its end to the agreement.

Mr. HOLLINGS. I am pleased to add my support for the agreement described by the Senator from Washington. I am the ranking member on both the authorizing committee and the appropriations subcommittee for the Department of Commerce, and my staff has worked closely with the Senator's staff in negotiating this agreement. As I understand it, the agreement would result in the following fiscal year 1987 funding levels for the affected programs:

Cold Neutron Research Facility	$6,500,000
Center for Fire Research	5,402,000
Center for Building Technology	3,470,000
Computer Science and Technology	7,500,000
Technical Competence Fund	6,763,000

Mr. GORTON. The Senator from South Carolina is correct, and I thank him for his assistance in negotiating the agreement.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: This is to confirm recent staff discussions on the National Bureau of Standards (NBS) authorization and appropriation bills.

The Office of Management and Budget (OMB) and the Department of Commerce will support a total NBS budget authorization of $123,953,000 for FY 1987. This level will include $6.5 Million for initiation of the Cold Neutron Facility and reductions from the pre Gra:nm-Rudman-Hollings FY 1986 operating levels of $.5 Million for the Fire Program, $.5 Million for the Building Program and $2.5 Million for Computer Sciences and Technology. There will also be reductions of $1.5 Million in the Competence Program and $1.641 Million in the Post Doctoral Program. Neither the Department of Commerce nor OMB will propose further programmatic reductions in the Fire, Building, and Computer Sciences Programs in FY 1987, FY 1988 or FY 1989. In the case of across-the-board budget changes such as reductions the President must make to achieve Gramm-Rudman-Hollings deficit targets or a subsequent sequester, these programs will be treated the same as the other NBS programs.

Our commitment is, of course, contingent on successful implementation of this compromise in both the final authorization and appropriation for NBS in FY 1987.

Sincerely,

CAROL T. CRAWFORD,
Associate Director of Economics and Government.

Identical letters sent to Hon. Ernest Hollings, Hon. Doug Walgren, Hon. Sherwood Boehlert, Hon. John Danforth, Hon. Don Fuqua, Hon. Manuel Lujan and Hon. Donald Riegle, Jr.

Mr. PACKWOOD. Mr. President, I am deeply disturbed by the language that was added to the Commerce, Justice, and State portion of the continuing resolution requiring the Federal Communications Commission to prepare yet another report on the fairness doctrine and submit it to Congress by September 30, 1987.

As a member of the Communications Subcommittee and an advocate of full first amendment rights for the electronic media, I am disturbed by the manner in which this language was added to the appropriations bill. I was not notified of this language, nor was my distinguished colleague from Arizona, the chairman of the Communications Subcommittee. This is particularly disturbing because we have demonstrated to the Senate our deep concern with the efficacy and constitutionality of the fairness doctrine. We

have held six public hearings on the regulation of the electronic media in 1982 and 1984. We also introduced the Freedom of Expression Act, which would repeal the doctrine. Mr. President, although I am no longer chairman of the Commerce Committee, I am bound to suggest that this matter falls directly within the jurisdiction of the Commerce Committee, and that by adding this language to the appropriations bill the Appropriations Committee is intruding into an area that properly and traditionally has been the concern of the Commerce Committee.

Additionally, I point out to my colleagues that the FCC has already done exactly what this language would require it to do. In August 1985, the FCC concluded a lengthy study of the doctrine that it began in May 1984. There was wide participation in the FCC's inquiry; over 100 parties submitted comments. The Commission even held 2 days of open hearings to ensure the broadest possible public participation. After all this, the Commission adopted a 108-page report, which concluded that the doctrine was no longer in the public interest and that it was "constitutionally suspect."

The FCC then ordered that its inquiry be terminated and that its report be forwarded to the appropriate committees and subcommittees of the House and the Senate. This report was forwarded to the Senate Commerce Committee, its Communications Subcommittee and the House Energy and Commerce Committee and its Telecommunications Subcommittee.

Mr. President, Congress does not need another report on the fairness doctrine. The FCC's last report is as comprehensive an analysis of the fairness doctrine as can be found anywhere. I am certain that if my colleagues looked at this report, and at the time and effort that went into preparing it, they would realize that there is no reason for the Commission to duplicate this effort

In addition to requiring the FCC to duplicate its efforts, this language may disrupt the progress of a pending court case challenging the constitutionality of the fairness doctrine. The pleadings in Radio-Television News Directors Association versus the FCC were filed immediately after the FCC issued its report. The petitioners have asserted that the first amendment prohibits the FCC from enforcing the fairness doctrine if, as it found, the doctrine is constitutionally suspect and works against diversity in the marketplace of ideas. The case is now before the U.S. Court of Appeals for the District of Columbia Circuit.

My colleagues might wonder what this case has to do with the language in this appropriation bill. In addition to the arguments on the merits, the court will hear procedural arguments on whether the FCC's report is a final agency action. The FCC has already submitted its answer: the report constitutes final agency action. Absent outside interference, the court would most likely agree with the FCC, hear the case as scheduled, weigh the competing arguments, and issue a decision on the constitutionality of the doctrine. By requiring the FCC to submit another fairness doctrine report, this language could cause the court to rule that the August 1985 Fairness report is not a final agency action, and therefore not subject to review by the court.

It is time the courts assessed the constitutionality of the fairness doctrine based on the relevant data that has been collected over the last 4 years. It was the Supreme Court that upheld the doctrine in 1969. More recently, the Court announced in FCC versus the League of Women Voters of California that it would be willing to reinvestigate the constitutionality of the fairness doctrine if the FCC demonstrated that the doctrine had a chilling effect on the discussion of controversial issue or that the scarcity rationale was no longer valid. If the FCC's latest fairness doctrine report is a reviewable agency action, and absent this language it would be, then the Court may have the opportunity to update its 1969 decision in light of the existing facts and circumstances.

Mr. President, I oppose the language which was added to the Commerce, State, and Justice portion of this continuing resolution. The Senate has held hearings, the FCC has issued its report, and now it is time for the courts to begin their examination of this important constitutional question.

GSA-LEASED SPACE IN SAN FRANCISCO

Mr. WILSON. Mr. President, I wish to express my concern to the distinguished Senator from South Dakota regarding the urgent need for the General Services Administration to reduce its excessive reliance on costly leased office space in San Francisco. GSA now leases approximately 2 million square feet of space in the bay area, most of which is in San Francisco. More than 6,000 Federal employees of Federal agencies now occupy leased space in San Francisco, with many of their operations now scattered among multiple sites. Lease costs in San Francisco are among the most expensive in the country and are expected to remain high during the next 10 years. Worse yet, GSA reports that its rent costs in the bay area are expected to increase by nearly 40 percent in the next 5 years, as older leases expire and are replaced at the higher rates.

I want to commend both the Appropriations Committee and the Environment and Public Works Committee for their efforts in encouraging GSA to reverse the growing trend of housing Federal employees in leased space by increasing the amount of space under Government ownership. Converting from leased space to Government ownership can produce substantial savings in the long run. Now, as Congress struggles to find ways to reduce the Federal budget deficit, it is especially important that GSA pursue opportunities to place more Federal employees in less costly Government-owned buildings.

One step in the right direction has already been taken with last year's appropriation of funds for the design of a new Federal building to be constructed on land donated by the city of Oakland. That project, however, is expected to take 4 to 5 years before the building will be ready for occupancy and, even then will solve only part of the leased space problem in the bay area. Additional steps are clearly required in San Francisco to relocate the employees from leased space to Government-owned space as soon as possible. GSA's building purchase program offers a very attractive means of achieving Federal building ownership and has a far shorter leadtime.

The mayor of San Francisco, Dianne Feinstein, has recently advised me that GSA will have the opportunity in the very near future to acquire such buildings in that city, and I believe we should encourage GSA to take advantage of such available opportunities should these buildings meet Federal office building requirements. I would like to point out that I am not suggesting any additional funding at this time. Indeed, increasing Government ownership in San Francisco and elsewhere is a means of reducing Federal expenditures.

I am pleased that the administrator of the GSA, Mr. Terence Golden, in testimony delivered in April of this year, stated that San Francisco is one of the cities warranting high priority for the building purchase program because of the high percentage of the Federal work forces now in leased space and because his agency's analysis indicates that the return on investment would produce significant savings. As Mr. Golden has said, San Francisco is one of GSA's highest cost areas overall.

Mr. President, the Congress and the executive branch have been expressing the right sentiment; what is missing is sufficient action. Nearly half of the Federal work force is housed in leased space, in contrast to the situation 20 years ago when 84 percent of Federal employees occupied Government-owned office space. GSA should be taking advantage of every opportunity to reverse this trend. Such an opportunity may well exist in San Francisco. Therefore, I ask the distinguished Senator from South Dakota if he agrees that Congress should direct the General Services Administration,

under its existing authority and from the funds appropriated in this resolution, to conduct a study of the availability of existing buildings for purchase in San Francisco, and if that study shows that an available building meeting Federal office requirements offers a costly advantage over leased space, to commence the selection process of such a building?

Mr. ABDNOR. Mr. President, I concur in the remarks of the distinguished Senator from California. His statement expresses our intention as well. We have been trying for some time through the Appropriations and Environment and Public Works Committees, on which I serve, to have the General Services Administration more aggressively pursue such opportunities in order to decrease reliance on costly leased space. The Public Works Committee has been striving to reduce leased space, as well. The committee should, and I believe will, play a very important role in assisting the GSA in its effort to secure appropriate space. The purchase program is obviously the fastest means of achieving that important goal. Moreover, when we complete our action here and meeting conference with the House, I will certainly urge that the conference report contain language encouraging GSA to pursue just such an effort in fiscal year 1987.

LANGUAGE FOR CONFERENCE REPORT ON HOUSE JOINT RESOLUTION 738

The conferees direct the General Services Administration, under its Building Purchase Program authority, to use a portion of its funds to study the availability of existing buildings for purchase in San Francisco as an expeditious means of reducing its reliance upon high cost leasing of office space and, in the event that such a study demonstrates that an available building offers a cost advantage over leased space and otherwise meets Federal office building requirements, then commence the selection process of such building.

POPULATION CONTROL FUNDS AND RESTRICTIONS

Mr. HELMS. Mr. President, the continuing resolution before us, House Joint Resolution 738, appropriates funds for foreign operations, including funds for population control. The House version appropriates $239,250,000 for population control while the Senate Appropriations Committee version appropriates $230,000,000.

Both Senate and House versions contain the same restrictive language as to the use of population control funds. In part, that restrictive language is as follows:

Provided, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.

Mr. President, the language I have just said is identical to the Kemp-Inouye-Helms amendment in Public Law 99-88, a supplemental appropriations bill, and in Public Law 99-190, the continuing resolution for fiscal year 1986. Although I believe that this language is clear and has been clear since its original enactment in August 1985, let me, as one of the original sponsors, state again the intent of this language.

The intent here is that no U.S. population funds may go to any organization or program which, as determined by the President, supports a program of coercive abortion or involuntary sterilization, or participates in the management of a program of coercive abortion or involuntary sterilization. For an organization or program to qualify under this restriction, it is not enough that it simply withdraws from the management of a program of coercive abortion or involuntary sterilization; it must cease even supporting, in any way, a program of coercive abortion or involuntary sterilization.

Mr. President, it now appears that the Administrator of the U.S. Agency for International Development understands this restrictive language in the same sense as I do. I am glad that he does, and I take his statement as a commitment to enforce vigorously this provision during fiscal year 1987.

The statement I refer to, Mr. President, came from Administrator M. Peter McPherson in response to a written question I put to him on April 24, 1986. His answer was received by me on July 16, 1986.

Mr. President, I ask unanimous consent that the question and answer previously referred to, which came in connection with hearings by the Foreign Relations Committee on AID oversight, be printed at this point in the RECORD.

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

AID INTERPRETATION OF KEMP/INOUYE/HELMS AMENDMENT

Mr. HELMS. Congressman Kemp and I sponsored, in major part, the following restrictive language in current law on expenditures of population control funds:

"*Provided*, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization."

Both Congressman Kemp and I made statements on the purpose of this language which appeared in the Congressional Record. The gist of our statements was that no U.S. population control money can be used by any organization or program which, as determined by the President, supports a program of coercive abortion or involuntary sterilization or participates in the management of such a program. Do you have any reason to disagree in any way with our statements on this law?

ANSWER. The statements made by you and Congressman Kemp which are part of the legislative history of your amendment underscored the two facets of the provision, namely that no population assistance may be extended to any organization or program which (1) supports a program of coercive abortion or involuntary sterilization or (2) participates in the management of a program of coercive abortion or involuntary sterilization. AID will respect the full legislative history of the Kemp-Inouye-Helms amendment in its application of the provision.

IMPACT OF AN EDUCATION DEPARTMENT REGULATION ON MAINE INDIAN SCHOOLS

Mr. COHEN. Mr. President, I want to bring to the attention of the distinguished chairman of the Labor, HHS, and Education Appropriations Subcommittee new regulations, proposed by the Department of Education, that would cause three Maine Indian Reservation schools to lose vital Federal funds.

At issue is whether the three tribal schools in Maine—one Penobscot and two Passamaquoddy Reservations—should be eligible for impact aid money. The Department of Education has been troubled by specific arrangements in various States wherein an Indian tribal school receiving funds from the Bureau of Indian Affairs [BIA] will somehow affiliate with a non-Indian public school in order to receive impact aid. These arrangements involve an Indian school linking with a local education agency [LEA] to receive its impact aid moneys, but the Indian students do not attend the LEA schools. The abuse that the Department identified was that those LEA's count the Indian students for impact aid, but otherwise have no responsibility for their education. To address this problem, the Department of Education has proposed regulations that would deny impact aid funds to this group of schools. Unfortunately, however, the regulations are not carefully crafted and are overbroad.

I am concerned that the proposed regulations will harm the Indian schools in Maine, which have not committed this abuse at all. The Maine Indian schools are an LEA on their own. They are not affiliated with any other non-Indian public school in order to qualify for impact aid. Since they are not part of the problem, they should not suffer the cure by losing impact aid funds.

These schools are trying their best to comply with State standards and maintain their LEA status, and I am afraid that without these funds, they will suffer financially and, ultimately, academically.

The regulation which the Department of Education proposes—a regulation expected to be finalized and approved shortly—should not sweep so broadly so as to include our Maine

Indian schools, where we have an entirely distinguishable situation. In fact, I believe that the Maine schools are the only Indian schools in the country that are themselves designated as LEA's. In Maine, the three tribal schools are not only the LEA but also are the public school district for the Indian students living on the three reservations. Underscoring this point, if the students want to go to off-reservation schools, they must pay tuition. It is worth noting that the situation that the Department describes in its proposed regulations envisions students who attend BIA schools, but are counted by neighboring LEA schools even though they are not attending the LEA.

Mr. WEICKER. I am pleased that the Senator from Maine has brought this problem to my attention. I agree with him that the Department's regulations appear to be overbroad.

Mr. COHEN. I hope that the Senator will allow me to elaborate. If the policy of the Department of Education is to eliminate all schools which accept BIA funds from the Impact Aid Program, its regulations must state the purpose clearly. This regulation appears, on its face, to address a specific, identifiable group of schools committing specific, identifiable abuse. Yet, the Department of Education insists that the penalty of the regulation reaches every Indian school which accepts BIA moneys.

Mr. WEICKER. I believe that the Senator from Maine has made a convincing case that Maine Indian schools are not part of the limited problem the regulation identifies.

Mr. COHEN. I thank the distinguished Senator for his understanding of this problem. Would the Senator be willing to join me in writing to the Department of Education to urge the Department to remedy our concerns?

Mr. WEICKER. I would be happy to join the Senator from Maine in writing to the Department of Education. Furthermore, I am willing to focus on this specific problem when my subcommittee holds hearings early next year if your concerns are not resolved before that time.

Mr. COHEN. I thank the Senator.

Mr. MOYNIHAN. Mr. President, it has come to my attention that the new Social Security Administration Northeast Program Center now being completed in Jamaica Queens, NY, will not provide adequate parking for its employees or for the estimated 600 SSA clients it is expected to serve daily.

This million square foot Federal building will house approximately 3,000 employees but will have parking facilities for just 45 cars. Under New York City zoning requirements a private building of the same size would require over 700 parking spaces. We know from surveys of SSA work force that over 750 spaces will be needed for employees who intend to drive to work. Downtown Jamaica can accommodate about half that demand.

The Department of Health and Human Services does not contemplate taking any immediate action to deal with this serious problem. The Department does, incidentally, provide parking for employees and clients in other cities, and they do so, I understand, in a manner consistent with good traffic planning objectives and in the best interest of the neighborhoods in which they are located.

The Greater Jamaica Development Corporation [GJDC], which has labored some 15 years to achieve revitalization of the downtown Jamaica area, is very much concerned about the adverse traffic and land use impacts that are likely to occur if the above-noted parking needs are not met. It has produced an action plan which would provide an interim surface parking solution as well as a subsequent permanent solution by means of a parking structure of appropriate size and location. The solution would resolve potential traffic problems, provide facilities needed by employees and clients at a reasonable cost, and support development objectives of downtown Jamaica and would do so privately, efficiently, and expeditiously. The solution has been discussed with the General Services Administration [GSA], the Department of Health and Human Services [HHS] and the Social Security Administration [SSA]. HHS, so far, has failed to act to resolve the problem. The GJDC solution is an excellent one, in my opinion. I would hope that HHS would find it possible to give the proposed leasing agreement the attention it deserves and get on with resolving this problem in a timely manner. The building, by the way, is a year from completion.

Senator WEICKER, as chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee, I request your help in bringing this matter to the attention of the Secretary of HHS. I would appreciate your concurrence in calling for the Secretary of HHS to address this problem within the next 30 days by meeting with GJDC officials and appropriate representatives of GSA, SSA, and relevant congressional staff, to work out the details. This may seem an unusual time and place to make this request, but I feel very strongly the issue must be addressed now. I appreciate your willingness to consider this issue.

Mr. WEICKER. I do not think it unreasonable that the Secretary should be able to review this issue, and make a determination with findings within 30 to 60 days.

Mr. D'AMATO. Mr. President, I would like to express my full support to see that this problem is quickly and satisfactorily resolved. It is my expectation that the Secretary of HHS and the Director of the General Services Administration will expeditiously address this matter and report back to us in a timely manner. I commend the chairman for his interest in this situation and I look forward to a rapid solution to this problem.

Mr. MOYNIHAN. I thank the chairman for his cooperation on this matter.

Mr. FORD. Today the Senate has adopted an amendment that provides that "none of the funds provided by this act may be used to implement the uranium enrichment criteria submitted to Congress on July 24, 1986, pursuant to section 161(v) of the Atomic Energy Act of 1954." The phrase "this act" refers to the continuing resolution, House Joint Resolution 738.

My question is this: Is there any possible interpretation of this amendment indicating that the Senate assumes that these criteria have been or should be approved?

Mr. DOMENICI. No. In fact, the Senate has already acted in section 612 of House Joint Resolution 699, increasing the public debt limit, to disapprove these criteria. The only possible interpretation of the amendment we have adopted today is that the criteria are doubly rejected. Not only has the Senate disapproved the criteria themselves, but it has also "put another nail in the coffin," so to speak, by making sure that no funds will be available should the Department of Energy attempt to implement the criteria, notwithstanding section 612 of the debt limit legislation.

Mr. FORD. I thank the Senator.

I ask unanimous consent that these remarks be printed in the RECORD after adoption of the amendment to which the remarks refer.

USAID ASSISTANCE FOR FOREIGN AGRICULTURAL EXPORTS

Mr. BUMPERS. Mr. President, I am pleased that the continuing resolution references Senate Appropriations Committee reported foreign assistance appropriations bill, S. 2824, which contains an amendment in section 555 I offered to restrict U.S. assistance to foreign agricultural exports. That bill has been rolled into House Joint Resolution 738, the continuing resolution for fiscal year 1987. I would like to take this opportunity to thank the chairman of the Subcommittee on Foreign Operations, Senator KASTEN, and the ranking minority member, Senator INOUYE, for their help with the amendment in the Appropriations Committee.

This provision restricts U.S. foreign assistance from promoting the agricultural export capability of foreign countries with whom we directly compete on the world market. I secured passage of a similar provision in the fiscal year 1986 supplemental appro-

priation bill, P.L. 99-349, and the restriction needs to be continued.

This provision is especially important to American farmers. The farmers of this country need to know that their hard earned tax dollars are not going to assist foreign countries increase their ability to export when those same countries are beating us out on the world agricultural market. With the precipitous decline in U.S. agricultural exports, and the record-high deficit, we need to be especially sensitive to the domestic implications of U.S. foreign assistance. Agricultural exports have declined from a peak of $43.8 billion in 1981 to an estimated $30.2 billion this year, and nearly 2 out of 5 acres of land harvested in this country is for export.

The United States has a responsibility to provide assistance to less developed nations for food security and subsistence agriculture. In fact, the amendment would not prohibit activities designed to increase food security in developing countries where such activities have a negligible impact of the export of agricultural commodities of the United States, or research activities designed to benefit American producers.

But the United States should not provide assistance for countries to better their export capability and undercut the ability of U.S. farmers to compete effectively. Yet, in the past, the Agency for International Development has awarded grants for research and development of export crops from foreign countries with whom we directly compete for agricultural products.

When the Senate accepted the amendment I offered on the fiscal year 1986 supplemental appropriation bill, I cited three specific examples of U.S. AID grants that have had as their effect the promotion of a competing countries agricultural export capacity. Grants were made which had as their effect the promotion of soybean production in Brazil, cotton production in Paraguay, and rice production in Thailand—all top competitors with United States farmers for these very same commodities. These grants involved research in the United States, but had as their effect the betterment of our competitors agricultural export capacity.

I recently met with AID Administrator Peter McPherson on this subject, and he assured me that AID has not intentionally made such grants that had such consequences. If U.S. AID finds that a particular type of research or development project has as its effect the promotion of the export capacity of a competitor, it should be stopped.

Once again, I would like to thank my colleagues on the Foreign Operations Subcommittee for their cooperation on this amendment. I urge the conferees on the continuing resolution to adopt this provision.

ST. CHRISTOPHER'S HOSPITAL

Mr. SPECTER. Mr President, I want to address myself to the Senator from Oregon [Mr. HATFIELD] in his role as chairman fo the Appropriations Subcommittee on Energy and Water Development. As he knows, the House version of H.R. 5162 carries an earmarking which is very important to me and to the Pennsylvania, New Jersey, and Delaware Tri-State Region. That earmarking is of $14.8 million for the St. Christopher's Hospital for Children Energy Demonstration Project.

St. Christopher's is a pediatric medical center located in Philadelphia, PA. It is a premier medical institution and a leading center for education and research in pediatric health care. St. Christopher's plays a critical role in the health care of children in the Tri-State Region as well as functioning as the family doctor for the low-income children of Philadephia.

Because of the growing regional needs for and clinical trends in pediatric care, St. Christopher's plans to construct a State-of-the-art medical center that is easily accessible to the region, a model of design, cost-efficiency, and energy efficiency.

According to St. Christopher's and the American Hospital Association, hospitals today spend 25 percent more on energy than they did in 1980. If hospitals could reduce their energy consumption by a quarter, the American Hospital Association reports that this could reduce health-care cost by $1 billion annually.

Mr. President, the technologies to affect these savings are presently in the developmental stages and are available for demonstration in hospital facilities.

Mr. President, I know that the Senator from Oregon can see that this is an opportuntity to combine the dual national goals of advancing new energy saving technologies and reducing the costs of health care. I understand the need to preserve the prerogatives of the Senate in conference and therefore have not offered an amendment at this time, but would ask the Senator if he might be in a position to review this project and recede to the House when we go to conference on this resolution.

Mr. HATFIELD. Mr. President, I thank the Senator from Pennsylvania [Mr. SPECTER] for his description of the St. Christopher's project. This project does appear to address important national issues and we will make every attempt to include it in our final deliberations.

Mr. SPECTER. Mr. President, I thank the Senator for his remarks and look forward to working with him on this in conference.

Mr. President, I should also point out that this amount is but a portion of the total cost of construction. The majority of the funds will be provided by the Commonwealth of Pennsylvania and private sources.

HYDROELECTRIC GENERATING EQUIPMENT

Mr. MATTINGLY. Mr. President, I am certain that Chairman HATFIELD is aware I have previously expressed my concern over the policy of the Corps of Engineers with respect to the acquisition of hydroelectric generating equipment from foreign sources. With your cooperation and that of other committee members, it was agreed by the full committee that the Corps of Engineers be directed to report to the Appropriations Committees of the House and Senate at least 90 days in advance of the issuance of a request for proposal or competitive bid solicitation for hydroelectric generating equipment if the proposal or bid could result in the award of the contract to an overseas contractor. Is it the full committee's understanding that the use of the term "overseas" applies to manufacturers not located in North America and North American manufacturers or suppliers who intend to provide equipment of non-North American origin?

Mr. HATFIELD. That is the committee's understanding, and the committee also views such a reporting requirement as desirable.

Mr. MATTINGLY. In addition, is it the view of the committee that if foreign sources could and would be used, the Corps of Engineers is required to demonstrate on other than cost-savings grounds, why foreign source equipment is needed?

Mr. HATFIELD. Mr. President, it is the intent of the committee that cost differences alone will not be considered sufficient reason for such practice.

Mr. MATTINGLY. Lastly, I was motivated by the fact that basic fairness in foreign trade mandates the committee's action. Many potential foreign suppliers of hydroelectric generating equipment are located in countries that do not permit American manufacturers or other North American suppliers to bid on such equipment for their public sector projects. In addition, it is highly probable that equipment from a foreign source would be highly subsidized by the foreign government to underprice competitors and obtain a market. Thus, the potential for buying dumped goods with Federal moneys is quite high. Is that the chairman's understanding as well?

Mr. HATFIELD. Yes. We understand that some foreign countries may have adopted such policies.

PLANT COMPLEX CARBOHYDRATE RESEARCH CENTER UNIVERSITY OF GEORGIA

Mr. MATTINGLY. Mr. President, simple sugars in the form of complex

carbohydrates are increasingly being recognized as playing crucial roles as informational molecules in all types of biological recognition and regulatory phenomena. Recently, Prof. Peter Albersheim, world leader in the field of plant complex carbohydrate research, and his research team, made the revolutionary discovery that complex carbohydrates localized in the primary cell walls of plants are developmental messengers in plants. Thus, one complex carbohydrate induces plant cells to produce only roots; another complex carbohydrate induces the same plant cells to produce only flowers. These observations will produce major breakthroughs in future plant biology research and biotechnology over the next 20 years.

Mr. President, research on the biochemistry and biology of complex carbohydrates is expensive and has lagged behind other research areas in the biological sciences. Understanding this deficiency in American science, the biological sciences research division of the Department of Energy, is proposing to establish up to four centers for complex carbohydrate research in the United States. The four centers will individually emphasize research in different areas, that is, plant, animal, and microbial complex carbohydrates and complex carbohydrates as materials. These centers would serve as focal points to revitalize and stimulate the American research efforts on the biological roles of complex carbohydrates and to realize the potential of research on complex carbohydrates for providing major contributions to agricultural problems and health of our society.

Mr. President, I believe Congress should encourage and provide the necessary funds for the establishment of such centers. I would like to inquire of the distinguished chairman of the committee's interest in this area.

Mr. HATFIELD. Mr. President, I thank my colleague from Georgia for raising this important matter. The committee is indeed supportive of increased research on plant complex carbohydrates and has recommended an increase of $5 million in biological energy research so that funds will be available for increased plant complex carbohydrates research and other research activities.

Mr. MATTINGLY. Mr. President, the State of Georgia and the University of Georgia have already made a significant contribution to this important national need in biological and biotechnology research through the establishment and partial funding of a Center for Plant Complex Carbohydrates Research at the University of Georgia plus the hiring of Prof. Peter Albersheim. In order that full funding of this important project can be realized, $3 million should be provided in the fiscal year 1987 DOE budget for startup funds and support of the Center for Complex Carbohydrates Research at the University of Georgia. This center will focus primarily on plant complex carbohydrates research.

Mr. HATFIELD. Mr. President, the committee provides additional funds for intial work for research facilities on plant complex carbohydrates at the University of Georgia.

PHASE II OF THE BARBOURVILLE FLOOD CONTROL PROJECT

Mr. McCONNELL. Mr. President, in 1980 Congress authorized the Corps of Engineers to control flooding along the Tug Fork and Levisa Fork of the Big Sandy and Cumberland Rivers in West Virginia, Kentucky, and Virginia. This is an area of the country that has a long history of flooding and the frequency and severity of flooding is expected to worsen as the region becomes more developed. In fact, in 1977 alone over 100 million dollars' worth of damage was sustained in the Fifth District of Kentucky. Therefore, I believe it critical that the Corps of Engineers move forward as quickly as possible to avert future disasters which will take their toll in lives and property.

While I am pleased that the bill contains $3.6 million for the Harlan flood control project, I was disturbed to see that the appropriation fell $800,000 short to initiate phase II of the Barbourville project. Instead, $300,000 was included for more design work; the corps maintains that it is not capable of initiating construction in fiscal year 1987. Mr. President, I challenge that assertion and suggest that the corps could initiate construction shortly if it had the funds.

The corps has been working on the design of phase II of the Barbourville project since August 1984. By contrast, phase I was designed and a contract let for construction within 7 months. The corps will complete its design work on phase II in April of next year. The fact that the design work is not finished is no reason why construction can not begin soon. Is it not the understanding of the Appropriations Committee chairman that it is quite usual for the corps to proceed with a project before the design is 100-percent complete?

Mr. HATFIELD. Yes, I understand that it is not unusual for the corps to begin construction before design has been finalized.

Mr. McCONNELL. I thank the Senator. It makes perfect sense for the corps to initiate construction. The first steps in phase II will be to raise a bridge at Highway 459 and relocate some utilities. That design is complete. In fact by the time these steps are accomplished, the entire design of phase II will have been finished.

It is obvious to me that there is no justified reason for any further delay in starting construction on this project. Last year a major flood swept through the Barbourville area. Considerable damage was prevented and lives saved because the corps had just completed phase I of the project. Let us not be complacent and believe that one more year of delay cannot take its toll. It can. We have the ability of avoiding the losses associated with a larger disaster if we proceed deliberately and swiftly in funding the next stage of the project.

While I had planned to introduce an amendment to bring this bill in line with the House-passed level of funding for Barbourville, I recognize the chairman's difficulties in keeping his bill within the targets stipulated by the budget resolution. Instead, I am wondering if the chairman could support the higher level for the Barbourville project in conference, and hope and trust the Senate conferees will recede to the House level for Barbourville's critical flood control needs.

Mr. HATFIELD. As the Senator from Kentucky knows, the corps had requested only $300,000 for further design work on phase II of the Barbourville flood control project. But the Senator makes some good points, and he can be assured that I will do my best and try to accommodate his request for this item, if sufficient budgetary resources are available.

Mr McCONNELL. I thank the chairman for his support.

ST. LOUIS HARBOR

Mr. DANFORTH. Mr. President, H.J. Res. 738, the continuing resolution, would make appropriations for this Nation's energy and water development programs during fiscal year 1987. I would like to call one particular water resources development project, the St. Louis Harbor project, to the attention of the Appropriations Committee and its chairman, the distinguished Senator from Oregon.

The St. Louis Harbor project would bring lasting benefits to two States, Missouri and Illinois. By reducing silting, construction of a dike on the Missouri side of the Mississippi River would allow reliable access to municipal docks, and eliminate the need for periodic dredging. On the Illinois side of the river, bank excavation would create a much-needed barge fleeting area. Together, these efforts would constitute a structural improvement to the Mississippi River channel, and a wise investment in the Nation's water resources. Finally, the project would improve land on both sides of the river, complementing extensive economic development administration investments in the area.

The House and Senate both included authorization of the St. Louis Harbor project in omnibus water resources legislation, indicating its merit. Congress appropriated $600,000 for planning and engineering in fiscal year

1985, and $425,000 in fiscal year 1986. Less than $700,000 is needed to finalize preparations for construction.

Though the legislation now before the Senate would not authorize funding for St. Louis Harbor, the House version of H.J. Res. 738 includes $500,000 for the project. I strongly believe that this project is a wise and appropriate Federal investment, and I urge favorable consideration of the other body's provision in conference.

Mr. EAGLETON. Mr. President, I share my colleague's interest in this matter, and would like to associate myself with his remarks. I believe that the St. Louis Harbor project merits continued congressional support.

Mr. HATFIELD. I appreciate the comments of the Senators from Missouri on this matter.

Mr. SIMON. Mr. President, the junior Senator from Missouri has mentioned that the St. Louis Harbor project would benefit my State. I would also like to express support for the project, which would bolster commerce and economic development in Illinois. I hope that the managers will look favorably upon the House provision in this case.

Mr. DIXON. Mr. President, I join the Senators from Missouri and my colleague from Illinois in urging that the Senate continue to support the St. Louis Harbor project, and in requesting the consideration of the managers during conference.

Mr. HATFIELD. Mr. President, I thank the Senators from Missouri and Illinois for their interest in this matter. You can be sure that it will receive close attention in conference.

Mr. DANFORTH. I thank the Senator.

FALLS OF THE OHIO

Mr. McCONNELL. Mr. President, at the end of 1981 Congress passed legislation authorizing the falls of the Ohio National Wildlife Conservation Area located in my home town of Louisville. The area is famous for its 375-million-year-old Devonian coral fossils which are reputed to be the best in the world. Thousands of people visit the falls each year and it is particularly popular with local schools taking field trips to observe the fossil formations. In addition, it is well known for its unusual and abundant bird life which attracted such naturalists as John James Audubon.

Several years ago the Congress made an initial investment of $300,000 for land acquisition and planning; yet this has fallen dangerously short of the amount needed to preserve this natural resource.

Mr. President, I got in touch the with Louisville district of the Corps of Engineers to inquire about reports I had heard about garbage dumpers and fossil thieves at the falls of the Ohio. Unfortunately, these reports are true. Specifically, the corps has informed me by letter that:

Public access to the fossil bed area for bird watching, fossil viewing, and bank fishing is from the Indiana bank. Some of the more common problems faced are uncontrolled pedestrian and vehicular access to the Indiana bank which often results in the dumping of trash, driving of vehicles over portions of the fossil beds, building of campfires, chipping of the fossils by souvenir hunters, wildlife hunting and so forth. In order to control this unregulated and often detrimental use, the Indiana shoreline must be in federal ownership. Also, to provide for appropriate public use, the parking area, overlook, and interpretive media should be in place. When such lands are owned by the United States, regulations governing the use of the Wildlife Conservation Area may be posted.

Visitors wonder why Government is standing idly by and allowing this natural resource to become desecrated. They wonder why we can't appropriate a modest sum to finish the job we started. But we can finish the job, Mr. President, and we should do it now before the fossils and wildlife are further jeopardized. I know that this is a matter of concern to the Senators from Indiana, as well.

Mr. LUGAR. The falls of the Ohio National Wildlife Conservation Area is important both to the environment and to the economy of Indiana. This project should be completed in a timely fashion to avoid any degradation of the fossil beds and to protect wildlife. The project will also help to stimulate the local economy.

Mr. QUAYLE. Mr. President, in August 1985, I personally visited the impressive natural resource on which Senator LUGAR and McCONNELL have commented. I join them in stressing the importance of action in the near future to stop damage to the ancient fossil beds and provide facilities for those visitors who come to learn from them. The 375-million-year-old fossils exposed in the bed of the Ohio River are a national treasure that should be preserved for exploration and study. The area also draws visitors from all over the Midwest and will play a central role in stimulating economic development in the communities along the Indiana River bank. Support for the falls of the Ohio has been wide spread on both the Indiana and Kentucky sides of the river. As a member of the Budget Committee, I fully understand the spending restraint that must be exercised during consideration of this legislation. However, I encourage my colleagues who will be participating in the House-Senate conference to honor the modest appropriation proposed by the House of Representatives to complete this project.

Mr. McCONNELL. The House Energy and Water Appropriations bill contains $900,000 for the falls of the Ohio. This amount would finish the job, Mr. President and protect the falls for future generations. I ask if the distinguished chairman of the Appropriations Committee could give us some assurance that this issue will receive favorable consideration in conference?

Mr. HATFIELD. I say to the Senators from Kentucky and Indiana that I will look into this matter to see if we can accommodate an additional appropriation for the falls of the Ohio. While I know you recognize the constraints we are under in meeting our targets, I agree that it is a worthwhile project and a modest request.

Mr. McCONNELL. I thank the chairman for his consideration.

COLUMBIA RIVER FISH PASSAGE FACILITIES

Mr. EVANS. Mr. Chairman, I am concerned that the work on the study and installation of mechanical bypass facilities for juvenile salmon and steelhead at the mainstem Columbia River and Snake River projects has not proceeded as expeditiously as possible. I appreciate the attention that the chairman has paid over the years to the restoration of the salmon and steelhead resources in these river basins. In particular, I appreciate the inclusion of the report language on this issue on page 49 of Senate Report 99-141.

More precisely, however, I am advised that the Corps of Engineers could expedite the schedule for completion of mechanical bypass facilities at three critical Snake River projects: Little Goose, Ice Harbor, and Lower Monumental. At the Little Goose Dam, the allocation of $745,000 would accelerate a gate rise modification for improved bypass efficiency. At the Ice Harbor Dam, $1,150,000 could be used to expedite prototype screen tests, fish guidance efficiency tests, and spill effectivenes monitoring. At the Lower Monumental Dam, $1,020,000 could be allocated to expedite prototype screen tests, feasibility study, construction design, and spill effectiveness monitoring. The result of these accelerated activities would be to allow completion of the bypass facilities 1 year earlier that is currently achievable. The sooner the corps can complete these facilities, the sooner our region can begin to enjoy the myraid benefits of the improved returns of the badly depleted upriver salmon and steelhead.

Is it the committe's intent in including report language which provides additional funds in fiscal year 1987 for Columbia River fish passage facilities to expedite the schedule for installation of bypass facilities at these projects?

Mr. HATFIELD. I thank the Senator from Washington for his remarks. I want to assure him that the committee's position is for the corps to proceed as quickly as possible on this fish work. The three projects mentioned by the Senator should be accorded a high priority by the Corps of Engi-

neers and the opportunity to gain 1 year in the schedule for their completion should not be lost if it can be avoided.

As the Senator knows, however, the committee was faced with the problem of having to reduce the House-passed bill by $1 billion in order to comply with the Congressional Budget Act. But I believe this work is important and that the Corps of Engineers should take a close look at the funding needed in fiscal year 1987 so that the installation of fish facilities can move forward. The committee has recommended an increase in funding for operation and maintenance activities so the corps should have sufficient resources and flexibility to augment this work.

Mr. EVANS. I thank the chairman for his assurances of the committee's interest in the expedited development of these projects.

BONNEVILLE'S CONSERVATION BUDGET

I am concerned about the reduced funding for Bonneville's conservation programs in this bill. The bill as passed by the committee provides $276.1 million in borrowing authority. Of this, only $86.8 million will be made available for capitalized conservation programs. In contrast, the House bill provides for a spending level of $139.2 million for conservation programs, which is consistent with Bonneville's 1986 resource strategy.

I am fully aware of the need to reduce all program levels caused by declining sales of nonfirm power to the Pacific Southwest. But I believe that conservation has taken a disproportionate reduction in the initial reductions proposed by the Bonneville Administrator. I also believe that the Administrator should follow the current resource strategy developed in cooperation with the Northwest Power Planning Council in which conservation has been identified as the most cost-effective resource. Does the chairman agree the resource strategy should be the guiding document for the Administrator's request for conservation borrowing authority?

Mr. HATFIELD. I agree the resource strategy should be the guiding document. I also agree with the Senator from Washington that the conservation programs should be maintained at an adequate funding level. Yet I also understand the Administrator's need to reduce all program levels because of the dramatic decline in nonfirm power sales to California. I believe we should continue to provide the Administrator some latitude in the difficult decisions that he must make in reducing programs. Such reductions should be carefully implemented and not unfairly impact one particular program.

Mr. GORTON. I concur with the chairman that, while recognizing budgetary stringencies, such reductions should not unfairly impact one particular program. I agree with the chairman that these are difficult decisions that the Administrator must make in order to maintain stable rates for Bonneville in our region.

I would point out, however, that the reductions proposed for the residential weatherization program are dramatic. It has taken utilities several years to develop relations with subcontractors and ratepayers in order to implement an effective program. Bonneville's proposed 42-percent reduction in this program will cause major disruptions in utilities' residential weatherization programs. In addition, the proposed cuts call for reductions in certain commercial programs. I urge the chairman to ensure that these reductions are allocated equitably across all programs in his oversight responsibilities of Bonneville.

Mr. EVANS. Partial deferral of these conservation program reductions could be achieved through the savings from reducing the current preservation budgets for the WNP 1/3 plants. Studies are now underway to determine the potential termination of these plants and their current preservation costs. While those studies are underway, BPA's contribution to the conservation programs could be restored by about one-half, while the utilities could contribute about one-half. The rate impact would be minimal. Does the chairman agree that these conservation programs should not face a major disruption from fiscal year 1986 to fiscal year 1987?

Mr. HATFIELD. I agree with both Senators from Washington that the goal should be to minimize disruption in the conservation programs. The conservation resource is a decentralized resource that requires the participation of many players. Stability is a key requirement for its success. Conservation is also afforded the highest priority in the Pacific Northwest Power Planning and Conservation Act passed by the Congress in 1980. I am aware of the proposal to defer partially the proposed conservation cuts by the Administrator. I urge the Administrator to expedite the WNP 1/3 study and coordinate its completion and implementation, as much as possible, with the reductions in conservation activities. As the committee report indicates, the Administrator should submit promptly the program reductions in detail to the Committees on Appropriations.

Mr. EVANS. I thank the chairman for his explanation. I hope he will carefully review the final program reductions when they are submitted to the committee in order to ensure they are equitably allocated across all programs.

MAGNETIC FUSION BUDGET

I am concerned about the earmarking of funds in the Senate committee's report on the magnetic fusion budget, specifically page 105 of Senate Report 99-141. Coupled with the $25 million reduction in the total magnetic fusion budget that the Senate made under the House figure, this earmarking will sharply reduce funding for a new, innovative project in the field reversed configuration type of confinement. Specifically, the LSX project of Spectra Technology is one of the two new major device fabrications which were initiated in fiscal year 1986 as the focus of DOE's efforts in the area of advanced fusion concepts [AFC]. Funding for the LSX project was included in the President's fiscal year 1987 budget request at the level of $3.9 million. The construction of the project is scheduled to be completed in 1989 at a total estimated cost of $8 million. It is patently unfair to delay substantially the development of this new and innovative AFC project just as it is getting started. I strongly urge the chairman to do his utmost in the conference committee to delete any earmarking of projects so that funding for the LSX project, as included in the President's budget request, can go forward in fiscal year 1987.

Mr. GORTON. I strongly concur with the remarks of Senator EVANS. The LSX project is highly recommended by both DOE and the scientific community. The Magnetic Fusion Advisory Committee recommended in 1984 that the construction of the LSX project proceed as the highest priority for the Advanced Fusion Concept [AFC] program, even in the event of constrained fusion budgets. Construction for this project started in fiscal year 1986. The President provided further funding to meet the the 3-year construction schedule in the fiscal year 1987 budget request. I urge the conference committee to raise the level of funding for magnetic fusion above the Senate committee's mark of $333 million and to delete any earmarking of minimum funding levels for specific projects.

Mr HATFIELD. I am aware of the concern as stated by both Senators from the State of Washington. I will make every effort to address their concerns on earmarking and funding levels in the conference committee.

TECHNOLOGY TRANSFER COMPONENT IN DEPARTMENT OF ENERGY BUDGET JUSTIFICATIONS

Mr. DOMENICI. Mr. President, the Federal Government funds an extensive and successful research laboratory network, which employs more than 15 percent of our Nation's scientists and engineers, and will spend approximately $18 billion in Federal funds this year.

These labs have performed a major role in our Nation's development as a leader in technology, and have played an instrumental role in our Space Program and our Defense Program. While

a considerable amount of this technology has been transferred to the private sector, I believe we can do more in this regard.

Mr. President, the report accompanying the Senate version of H.R. 5162, the energy and water development appropriations bill for fiscal year 1987, includes language directing the Department of Energy to streamline, shorten, and improve the budget justification material it submits to the Congress. I inquire if the distinguished chairman of the Appropriations Committee would agree that it would be desirable to include a brief statement in the justification material identifying those projects in which the transfer of new or improved technology to the private sector is feasible?

Mr. HATFIELD. I thank the Senator from New Mexico for his observations. He correctly points out that a significant amount of federally funded research carried out by DOE is, and should be, available for development by the private sector. I believe the inclusion of a technology transfer component in each DOE program, project, or activity, where appropriate, would be invaluable. The Appropriations Committee staff will be working closely with DOE to design improved justification formats. I assure my esteemed colleague that we will recommend inclusion of a technology transfer description requirement in the new format.

Mr. DOMENICI. I thank my good friend from Oregon for his support. I believe that this identification and description requirement will enable the private sector to benefit from Federal research efforts. Such a transfer of technology will better enable us to develop a strong national economy, to improve the Nation's international competitiveness, and to provide a better life for our citizens.

DEPARTMENT OF ENERGY GEOTHERMAL RECOMMENDATION

Mr. DOMENICI. Mr. President, I would like to discuss the recommendations of the Appropriations Committee for the Department of Energy's Geothermal Program if the distinguished chairman of the committee would allow.

Mr. HATFIELD. I would be pleased to enter into a discussion on DOE's Geothermal Program with my good friend from New Mexico.

Mr. DOMENICI. I thank the chairman. First of all, I commend the committee for recommending $3 million more than the House for the DOE Geothermal Program. Out of the total $20.9 million provided by the Senate, I am pleased that a total of $8 million would be available for the hot dry rock project, which is nearing completion.

My concern comes when I review the recommendations of the House in addition to those of the Senate. When all the fences, or earmarks, are taken into account, most of the money is utilized, and the remaining geothermal activities, including those at Sandia National Laboratory in New Mexico, could be significantly scaled back. Could the distinguished chairman of the Appropriations Committee tell me if he believes the final conference outcome will jeopardize existing programs?

Mr. HATFIELD. I thank the Senator from New Mexico for raising this concern. As he knows, I believe that the number of items earmarked in an appropriations bill should be minimized to give executive agencies the maximum flexibility to effectively administer their programs. However, fences or earmarks are a fact of life, and the Senator is rightfully concerned about the earmarks in the geothermal account.

I can only say that I hope that we can address these earmarks in conference and ensure that the underlying programs, including the Sandia activities, will remain intact.

Mr. DOMENICI. I appreciate the comments of the chairman, and I stand ready to assist him in these efforts in the upcoming conference on the energy and water development appropriations bill.

Mr. McCLURE. Mr. President, the Senate Appropriations Energy and Water Development Subcommittee recommends $37,650,000 for space and defense power systems. This recommendation includes funds for the SP-100 program, the isotope power systems and the multimegawatt power systems. Is it the intent of the subcommittee that these funds will also provide for the continuation of the Multimegawatt Terrestrial Program [MTP]?

Mr. HATFIELD. Yes, that was the intent of the committee. As the Senator knows, the Department of Energy funding for the MTP, $3 million for fiscal year 1987, is to be equally matched by the Department of Defense.

Mr. McCLURE. I thank the chairman for clarifying this matter.

SPACE AND DEFENSE, POWER SYSTEMS RECOMMENDATION

Mr. DOMENICI. Mr. President, I am very concerned about the priorities that seem to be outlined for the space and defense power activities of the Department of Energy. If I may, I would like to seek a clarification about these recommendations from the distinguished chairman of the Appropriations Committee, Senator HATFIELD.

Mr. HATFIELD. I would be pleased to discuss the Appropriations Committee recommendation for the Space and Defense Power Programs with the senior Senator from New Mexico.

Mr. DOMENICI. I thank the chairman. First of all, I am concerned about the overall level of funding recommended for Space and Defense Power Programs. The Senate recommendation of $37.7 million for fiscal year 1987 is $21 million below the House level and $36 million below the President's request. I would like to inquire of the distinguished chairman how he proposes that this reduction in funding is distributed? Did the chairman intend the various space power activities to be reduced across-the-board? Or would it be more appropriate to identify a program that should not proceed?

I believe there are valid reasons to prioritize funding for programs in the space and defense power account. For example, the dynamic isotope power supply project, commonly known as DIPS, is a program to develop an alternative to solar power for the boost phase of space surveillance and tracking systems. This research effort needs an adequate supply of plutonium to be properly developed, and there isn't enough plutonium to do so.

Mr. HATFIELD. I thank my friend and colleague, the distinguished Senator from New Mexico, for his observations. He is correct that the Energy and Water Development Appropriations Subcommittee had significant budgetary constraints under which to develop its fiscal year 1987 bill. I believe it prudent for the Appropriations Committee to set priorities for funding whenever possible to ensure that Federal dollars are well spent.

The Senator's suggestion that we prioritize activities within the Space Nuclear Power Program is well founded. I believe we should forgo continued develoment of the dynamic Isotope Power Supply Program in fiscal year 1987 because of the lack of information presented to the committee on this project. Under the reduced funding levels in the Senate bill, the DOE should limit activities to a minimum of design and technology studies. My distinguished colleague is correct when he notes that there currently is a serious question about the sufficiency of plutonium supply in order to successfully pursue DIPS development.

Mr. DOMENICI. I greatly appreciate the assurances of the esteemed chairman that Federal research dollars for space power applications will be used in the most effective manner possible. While I remain deeply concerned that reduced funding for these activities may jeopardize the Nation's ability to maintain a robust research program for space power, I am hopeful that this exchange, and the report language I proposed to the defense appropriations bill to encourage a multiagency approach to establishing a national space nuclear power program, will promote viable research in this essential area.

MAGNETIC FUSION

Mr. LAUTENBERG. Mr. President, the recent announcement by the Department of Energy concerning major

achievements in fusion research was most exciting. The Tokamak fusion test reactor experiments at the Princeton Plasma Physics Laboratory have reached record plasma temperatures of 200 million degrees, corresponding to the full temperature requirements of a practical fusion reactor. The experiments have produced a high level of confidence in the technical success of the TFTR break-even demonstration and have enhanced the economic promise of the Tokamak concept.

Earlier this year, I discussed with my distinguished colleague, the chairman of the Appropriations Committee, the value of enhanced funding for the National Magnetic Fusion Program. The budget proposed by the President for fiscal year 1987 is $333 million, down by 15 percent from the pre-GRH fiscal year 1986 budget and down by 30 percent from fiscal year 1985. The Appropriations Committee in its markup provided the full President's request, but the pressures on the program at this level of funding are enormous.

I was dismayed to learn that, under the constraints of the $333 million budget, the fiscal year 1987 funding for the TFTR program at Princeton has been cut again requiring further postponement of the break-even experiment. I have also learned that the Tokamak machines in Europe and Japan are assured of budgets that are about 1½ to 2 times greater than the operating budget for TFTR. These competing foreign fusion projects will be able to profit from the recent results of the U.S. program at the same time that we are reducing our budgets.

Mr. HATFIELD. We are aware of these developments and want to be certain that the U.S. program is adequately funded.

Mr. LAUTENBERG. In considering the magnetic fusion budget, the House added an extra $25 million. With this extra funding, DOE's Office of Fusion Energy would be able to provide the support previously planned for the TFTR project. The break-even experiment—the goal of the program for the last 10 years—could be completed on time. Adequate funding would also be available to complete and operate the alternate concepts program devices which are of great interest to our colleagues from Tennessee and New Mexico and the MFTF-B project in California could proceed in an orderly fashion.

The DOE could continue to move forward as planned on the next major step in fusion research beyond TFTR. This new machine has been under discussion since passage of the Magnetic Fusion Engineering Act of 1980. Work on the Compact Ignition Tokamak [CIT] must begin now so that construction can start in the late 1980's.

In summary, the additional funds provided would help protect the position of the United States as the leader in world fusion research, both in the near term and in the future. Such strong support is needed to insure that we will be able to maintain our preeminent position in fusion research.

Mr. HATFIELD. I thank my distinguished colleague from New Jersey for raising the issue of adequate funding for magnetic fusion energy research. This program has been reduced substantially in recent years, but I believe that the break-even and CIT experiments should proceed expeditiously. Let me assure the Senator that we will make every effort to provide adequate funds in fiscal year 1987 to carry forward the planned fusion program within the severe budget constraints which we face in conference.

Mr. COCHRAN. Mr. President, the appropriations bill for agriculture, rural development, and related agencies (H.R. 5177), which is included in the continuing resolution by reference, provides funding for the Department of Agriculture—with the exception of the Forest Service—the Food and Drug Administration, and the Commodity Futures Trading Commission.

The programs in the Agriculture appropriations bill affect virtually every step in the food chain. These steps include conserving our soil and water resources as a basis for production; conducting research on the production of agricultural commodities and livestock; protection of those products from various pests and diseases; assuring the safe and sanitary processing of foods and commodities, along with the fair and successful marketing of those products; and finally, helping to purchase foodstuffs for those who are unable to buy a sufficient amount of food for themselves. In addition, Federal crop insurance is available to protect farmers from losses, and export promotion activities are conducted to assure markets for their products.

The rural development portion of the bill provides credit programs to rural America. Farmers who are unable to independently obtain financing from private lenders may come to the Farmers Home Administration for either a direct loan or a guarantee of a private loan. Low-income rural citizens may obtain a low-interest housing loan or may receive rental assistance from the Farmers Home Administration's rural housing insurance fund. Also available from Farmers Home are loans and grants to rural communities, primarily for water and waste disposal systems to assure that rural areas have safe drinking water. The Rural Electrification Administration provides loans to rural electric and telephone cooperatives which provide valuable services to rural America.

As reported by the Appropriations Committee, the Agriculture appropriations bill includes $30,486,017,000 in total budget authority for fiscal year 1987. Within that total, we have provided funding for most programs at or near their fiscal year 1986 postsequester levels.

AGRICULTURAL PROGRAMS

In the research and extension portion of our bill, we restored most of the special and competitive research grants to their 1986 levels. Formula funds for land-grant universities and the 1890 colleges will be frozen at their 1986 levels in both the Cooperative State Research Service and the Extension Service. For the Extension Service as a whole, we did not go along with the President's requested reduction. Level funding is provided for virtually all Extension programs, including the Expanded Food and Nutrition Education Program, and an increase is provided for financial management and counseling programs for distressed and dislocated farmers.

In the marketing and inspection section of the bill, the committee has provided an increase of $5.5 million for meat and poultry inspection by the Food Safety and Inspection Service, an increase of $1.3 million for enforcement of the Animal Welfare Act, an increase of $2.4 million for animal damage control, $6.7 million for grasshopper control, and increases of $5 million each for avian influenza and citrus canker. Otherwise, programs such as brucellosis eradication, boll weevil control and eradication, and imported fire ant control, as well as other programs of the Animal and Plant Health Inspection Service are funded at the 1986 levels.

CORPORATIONS

For the Commodity Credit Corporation [CCC], the committee is once again recommending a current, indefinite appropriation for net realized losses. This approach to funding this account should alleviate the need for any shutdown of CCC operations, which, in turn, will alleviate the need for CCC supplemental appropriations.

The extreme weather conditions over the past year—including drought and flooding in the same areas in the same year—have caused the Federal Crop Insurance Corporation to suffer extensive losses. For that reason, we have provided an increase to cover the necessary indemnity payments.

RURAL DEVELOPMENT ASSISTANCE

In the rural development title of the bill, we have funded at the 1986 level the Farmers Home Administration rural housing programs and rural development loans and grants. Also, programs of the Rural Electrification Administration will remain at the 1986 level for the electric and telephone loan programs.

For farm loans, the farm bill prescribed a total level of $4 billion, including $1.5 billion for direct loans and $2.5 billion for guaranteed loans. Because of the high demand for farm op-

erating loans, the committee is recommending that the full $1.5 billion for direct loans be appropriated to the operating loan program. The farm bill and the House bill had anticipated that a portion of that funding would be for ownership loans. We have, however, provided $325 million for guaranteed ownership loans. The Secretary of Agriculture has the authority, provided by the farm bill, to transfer up to 25 percent of this amount to direct loans. The committee has directed the Secretary to use that authority whenever necessary.

For soil and water conservation, we have provided the traditional level of support and funding, although the total appropriation for the Soil Conservation Service [SCS] is below the 1986 level, because the 1986 appropriations total included $82 million for emergency watershed protection made necessary by the flooding which occurred last year in West Virginia and the Western United States. We are also reallocating funds within the SCS to place emphasis on technical assistance for land which is required to come into compliance with the conservation provisions of the farm bill.

DOMESTIC FOOD PROGRAMS

In the domestic food programs title of the bill, we have provided full funding for child nutrition programs—which includes school lunch and school breakfast programs—and the Food Stamp Program. We have also provided an increase of $75 million over the 1986 levels in the feeding program for Women, Infants, and Children [WIC].

INTERNATIONAL PROGRAMS

In the international programs of our bill, we have rejected the reduction requested in the budget for the cooperator program of the Foreign Agricultural Service; thus, funds for export market development will continue to be utilized through the cooperator program.

The budget resolution assumed a reduction in all foreign assistance programs, which translated into a $303 million decrease in the Public Law 480 programs. We have reduced these programs by $260 million. This $43 million difference with the budget resolution assumptions is the largest of such differences in the bill.

FOOD AND DRUG ADMINISTRATION

In the related agencies title of the bill, we have provided an increase for the Food and Drug Administration [FDA] to maintain its activities at the 1986 level. Included in the increase is $4.6 million for AIDS and $1 million for the FDA contingency fund, both of which were requested by the administration on August 15 in an amended budget request.

Mr. President, the Appropriations Committee has produced a bill which, I hope will be viewed as a measure which deserves the support of the Senate. It is within its 302(b) allocation in both budget authority and outlays and contains fair and responsible levels of funding for balance of the programs in this bill.

Mr. DURENBERGER. Mr. President, during the Senate's consideration of House Joint Resolution 738, I had planned to offer an amendment that would have allowed the Minnesota State Legislature and other State legislative bodies the opportunity to review their civil rights restoration laws in light of the enactment of the Federal Firearms Owners' Protection Act (Public Law 99-308). However, after my discussions with the floor managers of the pending resolution and other Members of the Senate, I understand that the proposed amendment has been objected to and I will, therefore, not press the amendment in a losing case.

The Federal Firearms Owners' Protection Act changes the definition of "conviction" for purposes of disqualifying a person from owning a firearm under the Federal Gun Control Act of 1968 (Public Law 99-308). The new law states that:

> Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, enpungement or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

In the State of Minnesota, a convicted felon's civil rights are automatically restored when his sentence expires. Therefore, under the new Federal law, it will no longer be a violation of the Federal Gun Control Act of 1968 for a Minnesotan convicted of a felony to possess a firearm after his sentence has expired. The same will be true in each State which automatically restores a convicted felon's civil rights.

This creates a problem in my State. The ironic, unintended side effect of this "glitch in the gun law" is to turn a law intended to crack down on crime into a law that could abet crime unless Minnesota changes its law regarding civil rights of felons. I agree with the Minneapolis Star and Tribune's editorial today which urges that the glitch be corrected.

Under Minnesota law, individuals convicted of a crime of violence will still be prohibited from owning a handgun for up to 10 years after their sentences have expired.

Public Law 99-308 is scheduled to go into effect on November 15, 1986. My amendment would have delayed the effective date of the provision defining "conviction" until after the Minnesota Legislature—and the legislatures of similarly affected States—had no opportunity to review its civil rights restoration laws.

Since this new law is the first major revision of the 1968 Gun Control Act—which has served as a model for many State gun laws—I believe it is appropriate for all of the States to review, and possibly revise, their laws governing possession of firearms, especially those State statutes regulating possession of firearms by convicted felons.

Mr. President, I submit for the RECORD the text of my amendment and the editorial at this time, so that my colleagues who wish to review it will have the opportunity to do so.

THE GLITCH IN THE GUN LAW

When most members of the Minnesota congressional delegation voted for the McClure-Volkmer gun law this summer, none of them expected that the measure would put guns in the hands of convicted felons. But that will be the effect in Minnesota—unless an unintended glitch is removed.

The glitch exists because Minnesota, like a handful of other states, automatically restores the civil rights of felons who complete their prison time. Under the current federal gun law, all felons are prohibited from owning any kind of firearm—unless they get a governor's pardon or special permission from federal authorities. But the new law, scheduled to take effect Nov. 15, lifts the federal ban on gun ownership for all felons who have had their civil rights restored.

Most states that restore ex-convicts' civil rights have firm laws barring felons from owning guns. But Minnesota lacks such a comprehensive ban: It forbids only the possession of handguns—and even that ban expires 10 years after release. Nothing in state law prohibits criminals from owning long guns. After mid November, a felon just freed from a Minnesota prison could legally step into a gun shop and walk out with a lethal weapon.

Because the law effectively "decriminalizes" gun ownership by felons in Minnesota, federal law-enforcement officials also will no longer be able to claim the use of firarms by felons to justify participation in local and state "sting" operations. The result could be an increase not just in gun availability, but also in many kinds of crime.

Thus a law that the National Rifle Association insists would crack down on crime in fact would abet crime. Perhaps some classes of felons—reformed tax dodgers or embezzlers, for instance—shouldn't be forever denied the pleasure of owning a hunting rifle. But most Minnesotans would probably agree that people convicted of violent or property crimes shouldn't be allowed to own firarms of any sort.

Unfortunately, Sen. Dave Durenberger hasn't yet been able to persuade the NRA to accept that simple proposition. Without the gun lobby's help, Durenberger cannot hope to coax his Senate colleagues to embrace legislation to ease Minnesota's plight. Congress is likely to adjourn without repairing the law, leaving the 1987 Legislature to pass the needed restrictions. In the meantime, Minnesotans can thank the NRA for helping felons to acquire firearms and for frustrating federal efforts to aid state and local law enforcement.

At the appropriate place, add the following:

SEC. . (a) Section 921(a)(20) of title 18, United States Code, as such section was amended by the Firearms Owners' Protection Act, is amended by inserting before the

period at the end thereof the following: ", except that if a person is convicted, deprived of his civil rights by reason of such conviction, and is later discharged, and the law of the jurisdiction in which the proceedings were held provides that such person's civil rights are thereby restored as if such conviction had not taken place, such restoration shall not be considered a restoration of civil rights for purposes of this chapter".

(b) This section and the amendment made by this section shall become effective, as to States described in the amendment to section 921(a)(20) made by subsection (a), on the date 30 days after the date of the end of such State's first legislative session which began after the date of enactment of this section.

Mr. BINGAMAN. Mr. President, the bill before us today, the Continuing Appropriations Act for 1987, which makes continuing appropriations available from October 1, 1986, until September 30, 1987, is the largest spending bill in American history. It provides approximately $556 billion in funding for the entire Federal Government to continue its operations through the next fiscal year. This continuing appropriations bill is needed because not 1 of the 13 permanent appropriations bills has been passed by the Congress at this time. I intend to vote against this bill for a number of reasons.

I must vote against this bill for both substantive and procedural reasons. There are a number of provisions in this bill which I find extremely objectionable on policy grounds.

First, I am opposed to the $100 million provided in aid to the Contras in Nicaragua. This money is just a downpayment on an unwise and counterproductive military intrusion in Central America.

I am opposed to the cuts this bill makes in military readiness. Such cuts put us on a path toward a hollow, toothless military, despite the massive overall increase in military spending during the past 5 years. We simply haven't faced up in this bill to the need to deal with the real budget constraints facing the military in the years ahead.

I am also opposed to the provision in this bill added to the foreign assistance appropriations bill which gives the President the discretion to forgive loans made under the Foreign Military Sales [FMS] Program. It applies to unobligated funds appropriated by Congress for the FMS Program in 1985 and 1986, an amount totaling $3.5 billion. The effect of this section is to turn a program which Congress created as a loan program into a free grant program, to be used to give away U.S. arms. I opposed this provision, but my amendment to delete it was unfortunately defeated by the Senate.

I am also concerned with many of the domestic spending cuts carried out in this bill. It cuts important education, health, and other human spending programs—in many cases beyond the levels needed to sustain these important programs.

I believe there may be many other specific provisions in this bill which I might object to if I knew all the details in this bill, It is practically impossible to really know what is in this bill, since it incorporates the 13 individual appropriation measures by reference without listing the provisions of the individual bills. Furthermore, most of these bills have not even been considered by the Senate and there has been very little effort to explain what is in these individual bills.

The fact of the matter is that not only don't we know the detail of what is in this bill, but that very little consideration has been given to these bills. The bills that are incorporated by reference in the continuing bill were passed by the House with very little debate and most have not even reached the Senate floor. As a result, we are being asked to vote for bills which we don't fully comprehend.

There are other procedural problems with this bill besides its size and lack of consideration and the lack of knowledge of what is in it. The distinguished chairman of the Appropriations Committee has asked that no authorizing legislation be added to this measure, except that he failed to mention that the bill is full of authorizing language added by the Appropriations Committee, some of which I have already mentioned. As a result, much of this bill should also be ruled out of order for being legislation on an appropriations bill.

Mr. President, I think it is time we begin to examine our legislative practices in this body. It is time we begin to examine how we conduct our business. We must ask ourselves why we cannot pass any of our permanent appropriations bills and must ask ourselves why we have so much legislating on an appropriations bill. Most of all, however, we must ask ourselves the most difficult question of how can we begin to address these questions and start to improve our practices.

Until we at least begin to address these problems, I feel compelled to vote against this bill. It has provisions which I am aware of which are troubling to me, and I fear it has other provisions which I am not aware of which would also be objectionable. I also feel that the bill is the product of a flawed process which needs drastic overhaul.

I urge my colleagues to oppose this bill.

Mr. LAUTENBERG. Mr. President, in a few moments, the Senate is going to pass a continuing resolution (H.J. Res. 738) containing all 13 appropriations bills for fiscal year 1987. This means, in effect, that the funds for every Federal program financed by annual appropriations are included in this single measure.

The continuing resolution also provides supplemental funding of $1.4 billion for expanded programs in drug enforcement and drug abuse prevention authorized in legislation just approved by the Congress.

I want to commend the distinguished chairman of the Appropriations Committee, Senator HATFIELD, and our able ranking member, Senator STENNIS, for their leadership and hard work this year. The committee has faced an almost impossible task. The budget situation is more stringent than ever. Yet, many of the programs essential to our common future—programs important to our economic growth and international competitiveness, to the education of our children, to the stability and health of our society—are already extremely short of resources.

Under the leadership of Chairman HATFIELD and Senator STENNIS, the committee has met the challenge about as well as humanly possible. All of the bills reported from the committee this year and included in this continuing resolution are consistent with the limits established in the congressional budget resolution. In fact, the continuing resolution as reported is, according to Congressional Budget Office, $7.3 billion in budget authorities and $.2 billion in outlays below the committee's 302(b) allocation. At the same time, we have been able to avoid the draconian assault on education, environment, health, urban development, housing, transportation, school nutrition, and other programs, that the President's budget proposed.

The continuing resolution as reported contains a total of $556.1 billion in new budget authority. This is a lot of money, Mr. President, but it goes to support programs that are vital to our Nation's well-being and security. Over opne-half of the total amount, $285.2 billion or 51.3 percent to be exact, is for defense and military construction. Another $16.7 billion or 3 percent is for foreign assistance and international affairs.

The remaining $254.3 billion funds the Federal Government's domestic activities with the exception of Social Security and a few other trust funds. This makes up barely 25 percent of a total Federal budget of close to a trillion dollars. But the agencies and programs funded in this part of the budget have a very direct impact on the quality of life and the economic opportunity of our people.

Nowhere is this more true than in my own State of New Jersey, which is in many respects a microcosm of America. Let me give you a few examples of what we have been able to accomplish for New Jersey and the Nation in putting together this continuing resolution and the underlying bills it contains:

AMTRAK. The administration proposed to terminate AMTRAK. This continuing resolution would provide $591 million.

Mass transit. The administration's budget zeroed mass transit formula grants. We are providing $2 billion.

Northeast Corridor Improvement Program. The administration requested no funds. We are providing $16.9 million, $3.6 million of which will go for rehabilitation of the Warren Street Bridge in Trenton.

Interstate transfer grants—highways. The continuing resolution provides $650 million, $40 million of which goes to New Jersey. The administration recommended $500 million within a block grant including both highways and transit transfers.

Asbestos removal grants. The administration requested no funds. The continuing resolution provides $50 million.

Radon. The administration requested $4.6 million for EPA's radon program. The continuing resolution provides $8.4 million.

Industry-University Cooperative Center for Research in Hazardous and Toxic Substances at the New Jersey Institute of Technology. No funds were requested. We are providing $2 million.

Superfund. The administration requested $1.05 billion. The continuing resolution provides the request and assumes an additional $600 million in carryover funds from fiscal year 1986.

Advanced Communications technology satellite. The administration proposed terminating this program. We are providing $77 million.

Repair and rehabilitation of dams in Delaware Water Gap National Park. No funds were requested. We are providing the $450,000 necessary to avoid draining these valuable recreational resources.

Construction of jetty at Barnegat Inlet. The administration requested $6 million. We are providing the request.

Construction of seawall and levee at Liberty State Park. The request was $5 million. We provide the request.

Institute for Nuclear Medicine at New Jersey University of Medicine and Dentistry. No funds were requested. We are providing $3 million.

Urban development action grants. The administration would have terminated the program. We are providing $225 million.

Community development block grants. The administration requested $2.6 billion, a reduction of $366 million. We provide $3 billion.

These are just a few examples, Mr. President, of how the committee has been able to avoid destroying important economic programs, attend to the particular needs of my State and others, and stay within the constraints of the budget we have adopted. This is no small accomplishment; and Chairman HATFIELD, Senator STENNIS, and my colleagues on the Appropriations Committee deserve a lot of credit. Not everyone will agree with every priority embodied in this continuing resolution and the underlying bills. But, on the whole, I believe it represents a reasonable balance among many conflicting and legitimate objectives. I urge its adoption.

MIDGETMAN SMALL MOBILE ICBM PROGRAM

Mr. GORE. Mr. President, I wonder if my colleague, Senator STEVENS, would indulge several of us by engaging in a discussion about the Midgetman Program.

This appropriations bill cuts the small ICBM Program by the same amount as did the Senate version of the fiscal 1987 Defense authorizations bill. It is a heavy cut, of more than half the President's request, and the consequence of that will be to delay the program significantly, by at least 1 year and perhaps 2. But I am hopeful that, despite the enormous budgetary problems we face, the conference process will find resources sufficient to avoid this delay.

The Appropriation Committee's report language on the Midgetman asks a number of excellent questions about the program; questions which really do need to be addressed by the President before Congress makes irrevocable commitments to the production of the missile. I want to emphasize that it is not the questions that trouble me. On the contrary, it is high time that the administration decides what it wants to do about the missile's weight, warhead loading, basing locations, and force size.

What give me pause, is the sense I get when reading the report language that the answers to these questions are viewed as being a year or more away; that the committee reduced the program's budget out of concern that the Midgetman Program has not—for want of a better word—matured enough; that it needs a great deal more work to be ready for a transition to full scale engineering development.

As my colleague from Alaska knows, I have followed the Midgetman Program with great attention, because I believe that it offers us the solution to problems that have plagued both the modernization and arms control processes. And I would like to suggest that, to the best of my understanding, the administration is, even as we speak, in the last stages of assembling the kind of data required to answer the questions raised by the committee report.

As my colleague will recall, the President instructed the Department of Defense last winter to study a number of options having to do with ICBM modernization, and to be ready with their report in time for decision by November. Very intense work has been underway, and the President's timetable has been met.

It seems to me that the situation is as follows. In terms of engineering work, the Air Force has been brilliantly successful in carrying out existing instructions and priorities. If told to produce and deploy Midgetman at the original 30,000 pound weight, or at a weight of 37,000 pounds, by 1992, they can assuredly do it. At the same time, they have—especially over the summer—been investigating the actual performance of the mobile launcher under a great variety of circumstances, and pressing forward in their effort to understand precisely, the implications of variant proposals in terms of costs and of stability.

All this information is now in the process of being focused for the President's attention, thus even further demonstrating there is no need to delay this program and initiation of Midgetman full scale development.

Mr. BYRD. Mr. President, I commend my distinguished colleague from Tennessee [Mr. GORE] for his untiring efforts to ensure that the small mobile intercontinental ballistic missile system, known as "Midgetman," remains a high national priority.

The purpose of our colloquy today is to underscore the importance we believe many in the Senate place on maintaining a fully-funded program to develop the small mobile ICBM, with the goal of deployment as early as possible and no later than 1992.

As the Scowcroft Commission first recommended, deployment of Midgetman is important for increasing strategic stability and strengthening America's deterrent to nuclear attack or blackmail.

Mr. President, several of us are concerned about the tenor of the language regarding the small ICBM Program contained in the Appropriations Committee's report on the fiscal year 1987 Defense Appropriations Act, which is incorporated by reference into the continuing resolution now before the Senate.

In addition to Senator GORE, I am confident this concern is shared by members of the Appropriations Committee—certainly including myself, and Senators CHILES and BUMPERS—and by members of the Armed Services Committee—including Senators GLENN and COHEN.

This report language raises several important questions about aspects of the Midgetman Program. Congress should receive the answers to these questions as it evaluates funding for the small ICBM Program. However, several of us do not believe that the 1- to 2-year delay in the small ICBM Program suggested in the report is needed to obtain these answers. Indeed, I understand that additional, new information already exists which should address the chairman's concerns.

This new information from the Midgetman Advanced Development Program reinforces the conclusion that a small, mobile ICBM weighing more than 37,000 pounds would be subject to serious mobility limitations degrading its survivability.

This new evidence also indicates that deployment of fewer, heavier, multiple-warhead small ICBM's actually results in costs roughly comparable to deployment of the 37,000 pound missile. Apparently, the decreased costs of fewer missiles and transporters may be offset, partially, by increased costs to manufacture the heavier transporter or launchers needed to accommodate the larger missiles.

In addition, the Air Force has reported that the Midgetman Program is within budget, on schedule, and meeting all performance requirements, and is ready to support a decision in the near future to enter full scale development, and a 1922 IOC. Two weeks ago, the Air Force further reported it already has completed an independent cost analysis of the small ICBM Program. This assessment should address many of the cost issues raised by the committee's report language.

Finally, the President has directed the Department of Defense to provide him, by November, with a comprehensive assessment addressing specific Midgetman options. Thus, within a few short weeks, this assessment should provide additional information to resolve the chairman's concerns.

The Midgetman ICBM, with its potential to be more survivable against Soviet strategic forces, or to require the Soviets to allocate a larger number of warheads to destroy it ultimately, represents a militarily-wise investment. The small mobile ICBM's possible contributions to arms control and crisis stability also are well-documented.

Few weapons programs, especially a nuclear system, have enjoyed such solid and consistent bipartisan support as has Midgetman. There is no cogent evidence for this program to be delayed by 1 to 2 years.

I hope my distinguished colleague, and friend, from Alaska will consider all these arguments, especially the new information which just has become available, as he discusses Midgetman in the joint conference which is about to begin. I hope he will become convinced, as many of us already are in the Senate, that the full budget request for the small mobile ICBM should be provided in fiscal year 1987, so that no delays will occur in this important defense program.

Full funding for the small mobile ICBM in fiscal year 1987 will send a powerful and appropriate message to the Soviets, to our allies, and to the executive branch, that Congress is committed to maintaining and improving our strategic forces in a manner which contributes the most to strategic stability, military effectiveness and arms control leverage.

Mr. CHILES. The recommendation to delay full scale engineering development [FSED] of the small ICBM, while based on genuine concerns, is inadequately justified. While questions remain, an orderly process has been established to develop thoughtful answers to these questions. Furthermore, the implication that the program is not ready to enter FSED ignores the progress and success achieved to date and the 3-year program plan established by the "blue-ribbon" Schreiver Panel. The requirements, deadlines, and decision points established in this process have been met or exceeded and the program is ready to transition to FSED.

This aggressive and comprehensive research program has included successful firing of 18 small ICBM rocket motors, case burst testing 24 rocket motor stage cases, more than 9 months of mobility testing for two prototype mobility test vehicles simulating hard mobile launchers [HML], and more than 11,000 hours of guidance system testing.

The implication that the Air Force has not done enough in the area of cost reduction overlooks the significant gains already accomplished in this area. The acquisition strategy for the small ICBM maximized competition, which has resulted in significantly reduced costs. The recent multiyear contract awarded for assembly test and system support is a prime example. Original Air Force estimates for this requirement exceeded $1 billion, yet the final contract award agreement was for $500 million—a reduction in the estimate of from 50 to 75 percent.

Pre-full scale engineering development has been successfully completed for many key system components including the assembly, propulsion, guidance and control, weapons control, and the hard mobile launcher. Thus, there is absolutely no reason to delay or slow the positive technological progress that has been made thus far.

The debate on ICBM modernization has been long and divisive. The central issue in that debate has been survivability and its relationship with strategic stability. Furthermore, recent intelligence indicators of the all out Soviet push to detect our submarine based ballistic missile capability should tell us that all three legs must be made as survivable as possible. The Scowcroft Commission strongly stressed the significance of this.

Given the outstanding progress made to date, it would not be wise to prejudge this process and recommend an arbitrary delay in the program.

Mr. COHEN. If my colleague would yield, I would like to take a minute, as a member of the Armed Services Committee, to put this matter into the context of what has occurred over the past year, as well as the approach that the Armed Services Committee has taken.

Last year, some called for a delay in the small ICBM's schedule, arguing that the program was ill-conceived and that viable and less costly alternatives had not been explored. They called for a postponement of full scale engineering development until the administration reported to Congress on these issues, especially options for larger, MIRV'd missiles. In contrast, the Armed Services Committee chose to "commend the Air Force for a well conceived and executed advanced development program." To address these concerns, though, the committee directed that an independent review of the Small ICBM Program be conducted by the Defense Science Board [DSB].

The DSB conducted its review, and its report was sent to Congress in March. As the Armed Services Committee noted in its report on the fiscal year 1987 defense bill, the DSB review concluded that the 37,000 pound small ICBM deployed in hardened mobile launchers would not only be highly survivable against current Soviet threats, but would "remain highly survivable in the face of future Soviet developments and countermeasures." Accordingly, the DSB review concluded that it would be in the interests of the United States to deploy the small ICBM in hardened mobile launchers. Furthermore, it recommended that full scale engineering development begin in fiscal year 1987. This is consistent with the recommendations of the Scowcroft Commission, as well as those of the Schreiver Panel, which set forth the development plan for the small ICBM Program. Both the Scowcroft and Schreiver Panels called for full scale development to begin in fiscal year 1987.

These conclusions have been further bolstered by cost analyses and mobility tests that the Air Force has conducted this year to support a full scale development decision this fall. These mobility tests have demonstrated that the vehicle weight for larger missiles are far higher than previously thought. Accordingly, many of the mobility problems for these larger missiles are worse than previously thought. While these problems might be ameliorated by adopting a restricted view of the system's operational requirements, to do so would reduce the system's survivability. In short, a force of heavier missiles is indeed far less survivable than a force of 37,000 pound missiles. Moreover, the cost analyses indicate that the difference in life cycle cost for a force of 37,000-pound missiles versus a force of missiles weighing either 52,000 or 75,000

pounds is not significant—exploding the myth that some $20 billion could be saved by going to larger, MIRV'd missiles.

In short, there is no question that the small ICBM is ready to begin full-scale development. The testimony of administration and Air Force witnesses to the Armed Services Committee this year support this view. Calls for delays in the program in order to conduct yet more studies are merely echoes of concerns expressed last year—concerns that have been put to rest. To quote this year's Armed Services Committee report, "the Air Force has conducted a model advanced development effort for the small ICBM that has achieved impressive technical results through competition"—let me repeat that, "a model advanced development effort."

It should be noted that, during its markup of the defense authorization bill, our committee reduced funding for the Small ICBM Program below the level required to initiate full-scale development this year. However, committee members clearly indicated that this was done to create a negotiating lever with House conferees, who place a higher priority on the small ICBM than on other programs supported by the Senate. It appears that the defense authorization conference is moving toward a resolution in which the small ICBM will have sufficient funds to begin full-scale development in fiscal year 1987.

I would remind my colleagues that the President has called upon the Congress to restore bipartisan support for a program to restore the survivability and effectiveness of the U.S. ICBM Program. A vigorous Small ICBM Program is essential to this effort. In contrast to the divisiveness which has paralyzed ICBM modernization in recent years, the Small ICBM Program has produced a bipartisan consensus spanning the political spectrum.

If we cannot move forward with a program that has such broad support, it is hard to see how we can move forward with any program—the MX, the advanced tactical fighter, you name it—no matter how important.

Mr. BUMPERS. As a member of the Appropriations Committee, I have long been a supporter of the small ICMB, the so-called Midgetman, as an absolutely necessary step to assure the survivability of our land-based missile force and thus the viability of our triad of strategic forces. In this regard, I was disappointed in the language contained in the report on the defense appropriations bill that in essence encourages a slowdown in the Small ICBM Program.

The United States has endured over 10 years of uncertainty over how best to assure the survivability of our land-based ICMB's. In the last 3 years we have finally seen a long-term answer develop, and, equally as important, a consensus for that solution as well. I hope this disturbing report language does not signal a step back from that consensus, and thus a step toward continued uncertainty. That would be an unwise course to follow in terms of our national security.

It has been useful for people to take another look at the proper size for the small ICBM, and at the right warhead loading for the missile. I personally believe that these questions were given too little attention when the Scowcroft Commission made their initial recommendations in April 1983. But recent study has shown that the decisions made over the last several years on the small ICBM were the right ones. We must remenber that the key to the survival of the small IBMC is mobility. Any steps taken that result in a significant loss of mobility must be resisted, even if they appear to offer desirable features like more warheads per missile.

Mobility is indeed the key feature. That is why MX, which is technically a fine missile, fails the test as an essential strategic weapon: based in silos, it will be a sitting duck to Soviet attack. It is why the Trident II missile passes that same test: based in Trident submarines, it will be highly mobile and survivable.

The small ICBM, weighing 37,000 pounds, will be capable of on- and off-road operation when deployed on its transporter launcher. It now seems that heavier missiles, in the 52,000 to 80,000 pound category, would be unsuitable because they would be more cumbersome and require a larger transporter that would not be as mobile.

This does not mean that we must forever reject the option of MIRVing the small ICBM, since it could be fitted with two, and possibly more, smaller warheads at some point in the future if it were deemed desirable. Likewise, we must be sure to raise the issue of verification of small ICBM's with the Soviets, to ensure that we are not creating insuperable problems for arms control. I believe that these concerns can be resolved, as we apparently are able to cope today with the verification that would be required for the Soviets' mobile SS-20 IRBM's.

But we must move forward with the Small ICBM Program. To introduce further delay into this vital program is to consign us to continued vulnerability in our ICBM forces. We are assuring the survivability of our submarine missiles through the Trident Program. We are assuring the survivability of our bomber forces through Stealth technology, through both the Stealth bomber and Stealth cruise missiles. We must not cripple our ICBM forces through continued delay of the one program that will assure the survivability of our land based missiles.

I urge the conferees to ensure that the conference report language strongly support, and the bill itself properly fund, the vigorous and uninterrupted development of the small ICBM.

Mr. GLENN. Mr. President, I rise to join my colleagues on both sides of the aisle in voicing my concerns about the low funding level and report language regarding the small ICBM contained in this resolution.

Reducing the small ICBM funding by $700 million in fiscal year 1987, together with report language stating "it is premature to support the transition of the small ICBM to full-scale engineering development," may be tantamount to killing the small ICBM Program—a result I am confident is not intended by the committee and the distinguished chairman of the Defense Appropriations Subcommittee.

According to the Air Force, a reduction of this magnitude will result in at least an 18-month slip in the initial operational capability for the system. In addition, the reduction would result in contractor layoffs from pre-full-scale development levels and would not permit establishment of a minimum subcontractor base necessary to support integrated weapons systems design efforts.

The only effective way to reduce the vulnerability of our present ICBM's or of new ICBM's based in fixed locations, is to make our missiles mobile, so that Soviet planners will not know where to shoot. Not surprisingly, the Soviets fully recognize this principle and are now starting to deploy their own mobile ICBM's, the new SS-25; further, they continue to develop the mobile SS-24. The time has come to make America's ICBM force mobile as well.

About 3 years ago, the President and Congress agreed on a solution to a problem that had vexed this country for more than a decade—what to do about land-based missiles in our era of rapidly increasing missile accuracy. The small ICBM Program was a large part, and the most innovative part of the solution.

As Secretary of the Air Force Aldridge stated in a May 2, 1986, letter to Congressman LES ASPIN, chairman of the House Armed Services Committee: "The small ICBM is truly an Air Force success story. We have traveled the road from a paper system to testing hardware in 3 short years. Mobility, hardness, propulsion, and guidance have all been evaluated, and we are ready to enter full scale development in fiscal year 1987."

In sum, the small mobile ICBM is less vulnerable, more stabilizing, and more amenable to being dealt with in the arms control process and, in the long run, may be more cost effective than fixed-silo ICBM's carrying many independently-targetable warheads.

As a member of the Senate Armed Services Committee, I am hopeful that the ongoing DOD authorization conference will authorize adequate funds to allow the small ICBM to stay on schedule and enter full scale development in fiscal year 1987, and that the subsequent appropriations conference will agree to provide the same funding level.

Mr. GORE. Mr. President, as I think this colloquy has demonstrated, their is substantial information to support a decision to proceed to full scale development of the small, mobile ICBM in fiscal 1987, and without a 1- to 2-year delay.

I hope these statements have indicated to our distinguished colleague from Alaska that the Midgetman missile has earned a significant base of support within the Senate, and that the program merits full funding to permit a timely transition into full scale development in fiscal year 1987 and to maintain the system's 1992 initial operational capability date.

Therefore, I would hope the distinguished chairman of the Defense Appropriations Subcommittee would be willing to assist in framing an outcome for this session in which Congress remains fully supportive of the small mobile ICBM as a high national priority.

I also would like to ask the distinguished chairman whether, in view of the Midgetman Program's excellent performance record, the statements here today, and especially the new information which now is available, if he would be willing to reconsider the committee's position and to take a fresh look at the Midgetman funding question as he enters conference with the House?

Mr. STEVENS. I stand by the committee position. I am constrained to point out that the level of funding for the small ICBM in this continuing resolution is the exact same amount as approved by the Senate during its consideration of the defense authorization bill last August. I appreciate the statements made by my colleagues during this colloquy about the small ICBM Program, and the new information they have presented today. I will certainly be willing to consider their concerns and this new information as we consider the appropriate level of funding for the small ICBM during our conference with the House.

Mr. GORE. I thank my colleague from Alaska, and I yield the floor.

OKLAHOMA UNIVERSITY ENERGY CENTER

Mr. NICKLES. Mr. President, as you know, the recent downturn in oil prices has had a catastrophic effect on the oil and gas industry. Not only has exploration for additional oil and gas supplies come to almost a complete halt, but also private industry is conducting very little research and development on enhanced oil recovery and other methods needed to preserve our energy security.

For that reason, energy centers such as the one at the University of Oklahoma take on added significance. There, private industry and the Government can develop and perfect the scientific methods that will assuredly be needed in the future when energy becomes scarce and improved methods of extraction will be needed.

But the downturn in the energy industry as a whole has had a devastating effect on our $45 million energy center. This center will be used for research and development in hydrocarbons, geology, petroleum engineering, and chemical engineering.

What is needed is a grant of $9 million to match just a part of the $34 million already committed by State and private sources. This money would be used for construction and capital equipment for the energy research center at Oklahoma University.

I would ask that my good friend from Oregon give us his assistance in this matter to obtain such a one-time Federal contribution.

For last 5 years, the oil industry has paid over $77 billion in windfall profit taxes and hasn't received anything in return. Given the hard times in the industry, the situation at our energy center, and the state of the economy in Oklahoma, I believe it is appropriate that the Federal Government work with us to keep oil and gas technology alive at the energy center.

I deeply appreciate the support that the distinguished chairman of the Energys and Water Appropriations Subcommittee is giving us in this matter.

Mr. BOREN. Mr. President, I join my good friend and colleague from Oklahoma in the discussion of this most worthy project. The University of Oklahoma is in the final stages of completing their $45 million energy center. The center will be the primary research center for the independent sector of our domestic oil and gas industry. Fields of research will include among others geology, geophysics, petroleum engineering, as well as the next generation radar [NEXRAD] operational support facility with a $1 million Doppler radar.

Currently almost 75 percent of the world's proven oil and gas reserves are under the control of OPEC and Communist countries. Our imports of foreign oil have jumped from 27 percent to almost 40 percent in less than 10 months. With 86 percent of all of our domestic drilling rigs sitting idle it is only a matter of time until our level of imports reach historic and ultimately unsafe proportions. Given that over 50 percent of all of the oil that has been discovered in the United States is not recoverable with current technology, we feel a small investment in a state of the art research facility for enhanced oil and gas recovery is essential for our long-term national energy security.

Therefore, I would ask my good friend from Oregon to lend his able assistance by including report language in fiscal year 1987 that the Department of Energy to provide $9 million, as a one time Federal contribution, for construction and capital equipment for the energy research center at the University of Oklahoma.

Mr. HATFIELD. Mr. President, as chairman of the Energy and Water Appropriations Subcommittee, I am keenly aware of the problem to which my distinguished colleagues from Oklahoma refer. I am especially sensitive to the needs of university research, especially the potential of the energy center your State is building in Norman, and I will assist you in this goal.

Let me assure my friends from Oklahoma that I will cooperate with them and work toward a matching grant of $9 million in funds which the Department of Energy may use, in its discretion, to provide for construction and capital equipment for the energy research center at the University of Oklahoma. This will be the total Federal contribution to the $45 million center, the balance of which has been financed by private and State funds.

As my friends from Oklahoma know, however, the energy and water bill is right at its allocation. To add these funds we would need an increase in that allocation. I am working toward that goal and hope that we will be successful.

The Oklahoma University Energy Center will provide a multidisciplinary approach to a variety of energy research activities now done and planned to be done at this fine university. I am pleased to be a part of this effort.

Mr. McCLURE. I understand the concerns of my colleagues from Oklahoma and will do what I can to assist them.

STEAMTOWN RENOVATION

Mr. SPECTER. Mr. President, I would like to ask the chairman of the Interior Appropriations Subcommittee if he would be willing to engage in a brief colloquy on a small appropriation that is in the House bill and is of importance to Pennsylvania.

Mr. McCLURE. I would be happy to engage in a brief exchange concerning this issue.

Mr. SPECTER. I thank my distinguished colleague. The appropriation to which I have referred is $5 million for the renovation of a roundhouse at Steamtown USA, one of the world's largest collection of steam engines and railroad stock, located in Scranton, PA. I recently introduced legislation, S. 2870, which would authorize Steamtown's designation as a national his-

toric site and $35 million in funding for the area's renovation.

Realizing that the time is short before the conclusion of the 99th Congress, it is my hope that the Senate will accede to the House appropriation for Steamtown. This money will send a clear signal to the people of Scranton that their desire to obtain national recognition for Steamtown is being properly addressed, and that a more comprehensive look at authorizing legislation will be taken next year.

Mr. HEINZ. If my colleague from Pennsylvania will yield, I want to associate myself with his remarks. The Steamtown appropriation will provide an excellent opportunity to get this extremely worthwhile project underway.

Mr. McCLURE. I thank my colleagues and I am well aware of their concerns over this project. As they are no doubt aware, we are in a very difficult situation with respect to additional spending. This matter will be on the conference table, and I will certainly keep this request before me as we hash out our differences with the House.

Mr. LAXALT. Mr. President, some 1,260 acres within Hope Valley, CA, have become available to the Forest Service. The Forest Service has long sought to acquire this important scenic and recreational resource near Lake Tahoe; an area which offers outstanding hiking, camping, and fishing opportunities in summer, and skiing and snowmobiling in winter.

Some $434,000 remains from funds appropriated in fiscal year 1985 for purchase of inholdings within the Toiyabe Forest in Nevada. This remnant funding is apparently restricted by language limiting its use to acquisitions within the Toiyabe Forest, NV. This language proposes to remove that impediment and make the money available to purchased inholdings in the Toiyabe Forest, CA, as well as in Nevada. These funds are critical to the proposed acquisition which would include funding from the State of California State Department of Parks, and an exchange offer from the San Bernadino National Forest.

Would the subcommittee chairman agree that funds provided for land acquisition within the Toiyabe Forest, NV, in prior years may be used in the Toiyabe Forest, as well?

Mr. McCLURE. I agree with the characterization of the previous appropriations history and have no objection to the use of Toiyabe Forest appropriated funds in California as well as in Nevada.

BUREAU OF MINES CHROMIUM STUDY

Mr. MURKOWSKI. Chromium is an essential element in several basic industries in the United States, most notably in the production of stainless steel and nonferrous alloys. We have seen the percentage of the ferrochromium used in the United States that is actually processed within our borders decline from 96 percent in 1970 to 14 percent in 1983. The decline in the United States processing of this strategic mineral concerns me because it is accompanied by a lag in the United States' ability to develop commercially, or even keep up with, new chromite processing technologies. In 1985, 65 percent of our imported chromite ore and ferrochromium came from South Africa. Having such a large percentage of our needs dependent on a politically volatile country concerns me. While we have a 2- to 3-year supply of chromium in our national stockpile, I am concerned that we may lack adequate processing capability and technology to efficiently process the chromite should the need arise.

The continent's largest potential source of high-grade chromium ore lies in Alaska. However, dominance of South Africa supplies has provided little incentive for production of the resource, or for the development of more efficient processing technologies. Accordingly, the deposits remain relatively untapped. The University of Alaska and the Cook Inlet Region, Inc. have proposed to implement innovative technology to extract and process, on site, chromite from the Red Mountain deposit on the Kenai Peninsula. They propose to process the ore for direct consumption by steel producers through means of a coal fed rotary kiln. This process eliminates reliance on conventional high energy intensive methods to produce ferrochrome.

The Senate has appropriated more that $130 million in fiscal year 1987 to the Bureau of Mines. Senator McCLURE, I request that the Director of the Bureau of Mines be directed to report to Congress by March 1, 1987, on the status of the chromite extracting and ferrochromium processing technologies in commercial use in the United States in relation to the technologies used by our competitors, including South Africa, Japan, Sweden, Finland, and Germany. This study shall also evaluate and develop a plan to ensure the United States' ability to reliably meet our chromium and ferrochromium needs through domestic supplies and production should we lose a significant foreign source, such as South Africa. Such a study will evidence the need for a demonstration project such as the Red Mountain project proposed above in order to ensure that our domestic ferrochromium processing industry maintains its competitive posture with current technology.

Mr. McCLURE. As you are aware, I consistently have urged that our stockpile realistically and adequately provide us with the proper amount of resources needed in times of national emergency. Not only must we possess the resources, but we must encourage the maintenance of a level of technical expertise that allows us the ability to process the minerals efficiently. I have discussed this situation with the Bureau of Mines. They are familiar with the situation and are anxious to proceed with such a study. Senator MURKOWSKI, I share your concerns about our chromium reserves and the progress of our ferrochromium processing technology and I wholeheartedly support your request for a study of this industry, as you have outlined.

Mr. WARNER. Mr. President, the Senator from Virginia, Mr. TRIBLE and I rise to engage in a colloquy with the distinguished chairman of the Interior Appropriations Subcommittee, Mr, McCLURE.

Mr. Chairman, the National Park Service's fiscal year 1987 request includes $2.5 million to be earmarked for planning and design of the George Washington Memorial Parkway improvements. The appropriation would come from title 23 funding, earmarked for "roadway improvement and parkway development for the George Washington Memorial Parkway."

The National Park Service has released a final environmental impact statement for improvements to a 1.6 mile segment of the George Washington Memorial Parkway (between Spout Run and the Theodore Roosevelt Bridge) and Spout Run Parkway, as directed in the fiscal year 1984 Interior appropriations bill.

This project is critical to alleviating daily traffic congestion along the George Washington Parkway. These improvements will save lives and minimize accidents, while preserving the beauty of the George Washington Memorial Parkway—the first Federal parkway and gateway to our Nation's Capital.

Mr. TRIBLE. Mr. President, I rise in support of the remarks offered by my colleague from Virginia, Mr. WARNER, regarding the George Washington Parkway improvements project.

Of the four alternatives presented in the draft environmental impact statement, the Park Service supports plan B, which recommends improvements at key entrances and exists where accidents occur frequently, including a much needed acceleration lane for traffic entering the parkway from Spout Run. The plan does not include any additional lanes, and specifically provides that National Park Service standards for improvements and parkway development must be met.

Mr. McCLURE. Mr. President, the Senators from Virginia, Mr. WARNER and Mr. TRIBLE, are correct with respect to my support for the needed improvements for the George Washington Memorial Parkway.

It was only an unfortunate oversight that this project was not included in the Senate Interior appropriations

bill. It is the intention of the Senate Appropriations Committee to recede and accept the House recommendation of $2.5 million to be earmarked for planning and design of the George Washington Parkway improvements from title 23 funding.

Mr. WARNER. I thank the Senator.

Mr. McCLURE. Mr. President, Senator GARN has asked that I include some language in the discussion concerning the continuing resolution clarifying that microwave transmission facilities owned by Rural Electrification Act borrowers be exempt from paying rental fees for facilities located on Federal lands controlled by the Federal Lands Policy Management Act. The Bureau of Land Management is interpreting narrowly language that Senator GARN and I included in Public Law 98-300. This language would clarify our intent.

DRAFT REPORT LANGUAGE FOR FISCAL YEAR 1987 INTERIOR APPROPRIATIONS BILL

● Mr. GARN. Congress on May 25, 1984, passed Public Law 98-300, amending the Federal Land Policy Management Act [FLPMA] of 1976 to exempt owners of telephone and electric facilities financed under the Rural Electrification Act of 1936, as amended, from paying rental fees for facilities located on Federal lands controlled by FLPMA. It has come to our attention that in recent administrative decisions, the Bureau of Land Management has narrowly interpreted the provisions of Public Law 98-300 to exclude microwave (or other communication facilities) owned by Rural Electrification Act borrowers. The plain wording of Public Law 98-300 makes it clear that Congress intended that all facilities financed under the Rural Electrification Act of 1936, as amended, and any extensions thereto are exempt from the rental fees. Neither microwave nor any other facilities financed under the Rural Electrification Act of 1936, as amended, in order to accomplish the goals of the act, were intended to be excluded from this exemption. We advise the Department that administrative funds are not available to process rental fee charges for any REA-financed facilities or extensions thereto located on Federal lands controlled under FLPMA.●

Mr. ABDNOR. Mr. President. I have been working with the distinguished chairman and the ranking minority member of the Appropriations Subcommittee on Military Construction, Senators MATTINGLY and SASSER, in an effort to earmark military construction funding for the school district which serves children whose parents are stationed at the Ellsworth Air Force Base in South Dakota.

Mr. President, I am advised that the junior Senator from Ohio has indicated he will object to the language we worked out even though my amendment does not add to the funding levels in this bill. My amendment simply gives the Secretary of the Air Force the authority to provide up to $600,000 of the funds appropriated to the Air Force for planning and design to enable the Douglas School system to commence construction of much-needed educational facilities. The Air Force supports my amendment.

My proposal is similar to an amendment I offered to the fiscal year 1986 DOD authorization bill which, although approved by the Senate, did not survive the House-Senate conference committee. Subsequently, the House Committee on Appropriations has agreed to include the discretionary earmark—in language nearly identical to the initial Abdnor amendment to the fiscal year 1986 DOD bill—in House Joint Resolution 738. The amendment I planned to offer to this continuing resolution would restore the earmark in a manner the distinguished Senator from Tennessee finds preferable to the approach taken by the House.

The school district's enrollment has increased by more than 165 students in the last year, and as the phase-in of the B-1 Bomber Program continues, additional military families will be moving into the district.

Since the Air Force seems unable to give us reliable projections of the numbers of additional personnel required by the deployment of the B-1 Program at Ellsworth, we do not know how many additional classrooms may be needed over the next couple of years. I wish to note, however, that the number of additional personnel has been said to run as high as 2,000—of which about 1,500 would likely have families—by the end of fiscal year 1988. If that estimate proved accurate, the number of children attending the schools of the district could double. No matter what the figure, I am advised by school district officials there is currently a need for at least eight new classrooms for the next—1987-88—school year.

Mr. President, I understand my friend from Georgia will support, at a minimum, language in the Statement of Managers on the conference report on House Joint Resolution 738 directing the Secretary of the Air Force to ascertain the impact of the phase-in of the B-1 at Ellsworth on the Douglas School system by a date certain.

Mr. MATTINGLY. The Senator from South Dakota is correct. Further, if the Secretary determines existing educational facilities are not sufficient to accommodate military dependent students, we intend to direct him to submit a reprogramming request to the House and Senate Appropriations Committee. Our mutual objective is to enable the Douglas School system to begin work during this fiscal year on the facilities it needs to provide educational services to the military dependents at the Ellsworth Air Force Base.

Mr. ABDNOR. I thank the able Senator from Georgia for his attention to this important matter. I look forward to continuing to work with him to ensure necessary capital improvement funding for the Douglas School system.

THE MANDATE REIMBURSEMENT AMENDMENT OF 1986

Mr. DURENBERGER. Mr. President, over the past 20 years, the number of Federal regulations imposed on State and local governments has increased dramatically. Though there are no reliable estimates of the total costs imposed by Federal regulations, rough estimates indicate the costs to State and local governments total tens of billions of dollars a year. This tremendous burden on State and local governments will be made more difficult because of the termination of the General Revenue Sharing Program.

In this time of budgetary belt-tightening for all levels of Government, it is important for the Federal Government to accept fiscal responsibility for rules and regulations it imposes on State and local governments. Today, therefore, my colleagues and I are introducing the Mandate Reimbursement Amendment of 1986. The premise of the bill is simple: If Congress passes legislation to pursue a national purpose, the Federal Government should pay the costs of achieving it. Under our current system, Congress need not face the full costs of implementing legislation it passes, because it is able to shift a considerable amount of costs onto State and local governments through the regulatory process.

The Mandate Reimbursement Amendment of 1986 is simple in its design. It requires Federal reimbursement for all additional direct costs incurred by States and their local governments in complying with any new Federal rule or regulation. If such relief is not forthcoming, the amendment provides that no Federal agency or court shall enforce the unreimbursed regulation. However, where it is inappropriate for Congress to share the costs of regulatory implementation because fundamental rights or generally accepted goals are involved, this amendment permits Congress to exempt a national regulation from reimbursement upon a two-thirds vote of both Houses.

Mr. President, the Advisory Commission on Intergovernmental Relations found in a recent study that "although the specific programs imposing major fiscal and administrative costs vary greatly from one jurisdiction to another, most States, cities, and counties have been restrained by the combined weight of the new Federal inter-

governmental regulations taken as a whole." As an example, consider a recent Urban Institute study of six Federal regulatory programs in a sample of seven cities and counties. It concluded that the annual federally mandated costs of just these particular six programs ranged from a total of $6 to $50 per capita. For a State like Minnesota, this means the cost burden would run between $25 and $209 million annually for only six programs.

This, I suspect, is only the tip of the regulatory iceberg. ACIR identified more than 35 major Federal regulatory statutes, constituting thousands of pages of rules in the Federal Register, aimed at or implemented by State and local governments.

While the cost to State and local governments for implementation of Federal regulations has skyrocketed, the Reagan administration seeks curtailment or outright elimination of many Federal financing tools which in the past have helped offset growing cost burdens caused by enactment of Federal mandates. My staff at the Subcommittee on Intergovernmental Relations put together a table which depicts funding trends in selected major intergovernmental regulatory programs. This table shows that—with few exceptions—funding for these programs is down significantly, in some cases by as much as 20 percent.

Let me reiterate in the strongest possible terms that this amendment is not intended to undermine the goals of important protective regulations, such as those in environmental protection and occupational safety. I could not support it if it did. It is intended to promote the attainment of national goals. Study after study has found that many Federal regulations fail to achieve their aims because of inadequate resources available to State and local implementors. This legislation will translate empty promises into real achievements.

Mr. President, I have been made aware of the fact that the Committee on the Budget has a number of technical objections to this amendment which cannot be corrected prior to final passage this afternoon. I will therefore submit the amendment for the consideration of my colleagues and indicate I intend to press this matter early in the 100th Congress.

Mr. President, I had intended during the course of the consideration of the continuing resolution to present an amendment to the continuing resolution on behalf of myself and my colleagues, Senator WILSON from California, Senator ROCKEFELLER from West Virginia, and Senator MATTINGLY from Georgia, and perhaps others, the mandate reimbursement amendment of 1986.

The current occupant of the chair will appreciate over the period of time of his public service the role the Federal Government has played in the behavior and the performance of State and local government has grown immeasurably. In many cases in the early years of this cooperative federalism, the behavior in the performance on the part of the State and local partners in the innergovernmental system was brought about through categorical grants of Federal income tax.

But in the most recent years we have taken to attaching to the most miniscule of appropriations of Federal moneys and incredible of what we have come to call mandates on the behavior and the performance of State and local government.

Mr. President, the mandate reimbursement amendment of 1986 and the Intergovernmental Regulatory Relief Act of 1986 on which it was premised was designed with little honesty in mind and that is to suggest to our partners in the intergovernmental system that from now on Federal Government has enacted in the national interest regulations and mandates of behavior on the part of the State and local government would also send along the resources, the financial resources, needed by our partners to implement the mandates.

As I understand it, we had this amendment cleared all around the horn with one exception, and that is the Budget Committee which raised a variety of objections to its consideration, most of them at the last minute, and for that reason my partners and I in this endeavor were unable to present our amendment.

Mr. President, I would suggest that this is a matter whose time has come along with a lot of other initiatives. I heard the President of the United States speak as a President and reflecting on his time as a Governor of one of the largest States of this country, on the need to improve the partnership by pinning down the responsiblities of various levels of this government.

I know that you, the occupant of the chair at the present time, have a deep concern for the improvement of this partnership and have committed yourselves over the next 2 years toward perfecting this Union.

So I will say to my colleagues that while the mandate reimbursement amendment of 1986 is not part of the continuing resolution, it or a bill very similar to it will be a very serious part of our effort during 1987 and 1988 in the 100th Congress to improve the efficiency of this intergovernmental relationship.

I would say in the same tone, Mr. President, that it is disappointing to me at the end of the continuing resolution process to see the amendment for financing or so-called financing of the drug bill which we passed earlier this week in the form that it was in. I know again the present occupant of the chair has spoken forcefully during the consideration of this debate, as has our colleague from Connecticut, about the need for the Nation to finance the decisions that it takes to provide for the needs of its people. And I think that final amendment which said that we are going to waive the Budget Act in order to adopt the expenditure requirements of the drug abuse or antidrug abuse bill to the continuing resolution is another evidence of a nation which cannot learn to live within its means, a nation which is bent on solving its problems by sending the bills on to another generation.

So I hope, Mr. President, the comments that you made on the floor of the Senate over the past week in this regard, the comments that were just made by our colleague from Connecticut, Senator WEICKER, who has the appropriations responsibility for overseeing this process and legislation like the mandate reimbursement amendment of 1986, all sometime next year will come together as the tool that we may use as we celebrate the Bicentennial of the Constitution of the United States to help us define the national purposes which are supposed to be the work of this place.

Among those purposes is to learn to live within our means to take responsibilities as politicians for our actions on this floor and to send those very same signals to our colleagues in government at other levels.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the intergovernmental regulatory relief provisions, an article entitled "Mandates Without Money," and various other attachments referred to in my statement.

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

At the end of the joint resolution, add the following new title:

TITLE II—INTERGOVERNMENTAL REGULATORY RELIEF

PART A—GENERAL PROVISIONS

SEC. 201. This title may be cited as the "Intergovernmental Regulatory Mandate Relief Act of 1986".

SEC. 202. (a) The Congress finds and declares that—

(1) Federal regulation of State and local governments has become increasingly extensive and intrusive in recent years;

(2) such regulation has, in many instances, adversely affected the ability of State and local governments to achieve their independent responsibilities; and

(3) such excessive fiscal burdens also undermine the attainment of the goals of Federal regulations.

(b) Therefore, it is the purpose of this title to establish procedures to assure that the Federal Government pays the total amount of additional direct costs incurred by State and local governments in complying with any intergovernmental regulation

which takes effect on or after the date of enactment of this joint resolution.

SEC. 203. For purposes of this title, the term—

(1) "additional direct costs" means the amount of costs incurred by a State or local government solely in complying with an intergovernmental regulation promulgated pursuant to a Federal law concerning a particular activity which is in excess of the amount that such State or local government would be required to expend in carrying out such activity in the absence of such law, except that such term does not include any amount which a State or local government is required by law to contribute as a non-Federal share under a Federal assistance program;

(2) "Director" means the Director of the Congressional Budget Office;

(3) "Federal agency" has the meaning given to the term "executive agency" in section 6501(3) of title 31, United States Code;

(4) "Federal assistance" means any assistance provided by a Federal agency to State and local governments or other recipients, in the form of grants, loans, loan guarantees, property, cooperative agreements, or technical assistance, except that such term does not include direct cash assistance to individuals, contracts for the procurement of goods or services for the United States, or insurance;

(5) "intergovernmental regulation" means a regulation promulgated by a Federal agency that requires a State or local government to take certain actions or requires a State or local government to comply with certain specified conditions in order to receive or continue to receive Federal assistance and which requires the termination or reduction of such assistance if such government fails to comply with such conditions;

(6) "local government" has the same meaning as in section 6501(6) of title 31, United States Code;

(7) "significant law" means any Federal law which is likely, in the judgment of the Director, to result in total additional direct costs to all State and local governments of $25,000,000 or more in any fiscal year, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government; and

(8) "State" means each of the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

PART B—COMPENSATION OF STATE AND LOCAL GOVERNMENTS FOR ADDITIONAL DIRECT COSTS

SEC. 211. (a) Except as provided in subsection (b), a Federal agency or a court of the United States shall not require State governments or local governments to comply, in any fiscal year, with any intergovernmental regulation which—

(1) takes effect on or after the date of enactment of this joint resolution; and

(2) is promulgated pursuant to a significant law, unless provisions of law have been enacted which provide a sufficient amount of funds for such fiscal year to reimburse such governments for the total amount of additional direct costs that will be incurred by such governments in complying with such regulation during such fiscal year.

(b)(1) Notwithstanding subsection (a), a Federal agency or a court of the United States may require State and local governments to comply with an intergovernmental regulation to which subsection (a) applies and which will be in effect during a fiscal year if, with respect to such intergovernmental regulation and such fiscal year, a joint resolution described in paragraph (2) is enacted by a two-thirds vote of the Members of each House of Congress, duly chosen and sworn.

(2) A joint resolution referred to in paragraph (1) is a joint resolution which, with respect to an intergovernmental regulation that will be in effect during a fiscal year, waives the provisions of subsection (a) that require that provisions of law be enacted to provide a sufficient amount of funds for such fiscal year to reimburse State and local governments for the total amount of additional direct costs that will be incurred by such governments in complying with such regulation during such fiscal year.

(c) For purposes of this section, the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in any fiscal year shall be the total amount of such costs for such regulation estimated by the Director for such fiscal year in the report required under section 212 for such fiscal year.

SEC. 212. (a) For each fiscal year in which an intergovernmental regulation promulgated pursuant to a significant law will be in effect, the Director shall prepare and transmit to the President and the Congress a report specifying, for each such intergovernmental regulation and with respect to such fiscal year and the fiscal year succeeding such fiscal year—

(1) an estimate of the total amount of additional direct costs that will be incurred by all State governments and local governments in complying with such intergovernmental regulation in each such fiscal year; and

(2) an estimate, for each such intergovernmental regulation, of—

(A) the total amount of additional direct costs that have been incurred or will be incurred in each such fiscal year by the government of each State and all local governments in such State in complying with such regulation in each such fiscal year; and

(B) the ratio (stated as a percentage) which the total amount of additional direct costs that have been incurred or will be incurred by all local governments in a State in complying with such regulation in each such fiscal year bears to the total amount of additional direct costs that have been incurred or will be incurred by the government of such State and all local governments in such State in complying with such regulation in such fiscal year.

(b) The Director shall transmit each report required by subsection (a) for a fiscal year to the President and the Congress by September 1 of the fiscal year preceding such fiscal year.

SEC. 213. (a) For each fiscal year in which an intergovernmental regulation promulgated pursuant to a significant law will be in effect, the chairman of the committees of the Senate and of the House of Representatives having legislative jurisdiction over such significant law shall propose, to an appropriate bill or resolution providing funds for such fiscal year, an amendment containing provisions to appropriate funds to reimburse State governments and local governments for the additional direct costs incurred in complying with such regulation. The amount of funds proposed to be appropriated by such amendment shall be equal to or in excess of the amount described in section 211(a).

(b) Subsection (a) does not apply with respect to an intergovernmental regulation which will be in effect during a fiscal year if, with respect to such intergovernmental regulation and such fiscal year, a joint resolution has been enacted in accordance with section 211(b).

SEC. 214. (a)(1) The head of each Federal agency which administers an intergovernmental regulation promulgated pursuant to a significant law shall pay to each State government in each fiscal year the amount determined pursuant to this section to reimburse the State government and local governments in the State for the additional direct costs incurred by such governments in complying with such regulation in such fiscal year.

(2) A State government which receives payments under this section for reimbursement for additional direct costs incurred in complying with an intergovernmental regulation in any fiscal year shall pay to each local government in the State the amount determined pursuant to this section to reimburse such local government for the additional direct costs incurred by such local government in complying with such regulation in such fiscal year.

(b) The total amount to be paid to a State to reimburse the government of the State and local governments in the State for additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall be an amount which bears the same ratio to the total amount for reimbursement of additional direct costs for all State governments and local governments described in section 211(a) with respect to such regulation for such fiscal year as the total amount of additional direct costs with respect to such regulation specified under section 212(a)(2) for such State government and local governments in such State for such fiscal year in the report submitted by the Director under this part for such fiscal year bears to the total amount of additional direct costs with respect to such regulation which are specified under section 212(a)(1) in such report for all State governments and all local governments for such fiscal year.

(c)(1) The total amount to be paid by a State government to local governments in such State to reimburse such governments for additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall be equal to the product of the amount paid to the State under subsection (b) for such fiscal year multiplied by the ratio specified by the Director for such State under section 212(a)(2)(B) with respect to such regulation for such fiscal year in the report submitted by the Director under this part for such fiscal year.

(2)(A) A State government which receives payments under this section to reimburse local governments in the State for the additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall pay to each such local government an amount equal to the product of—

(i) the total amount determined under paragraph (1) with respect to such regulation for such fiscal year, multiplied by

(ii) the ratio (stated as a percentage and estimated by the State in accordance with subparagraph (B)) that the total amount of additional direct costs incurred by such local government in complying with such regulation in such fiscal year bears to the total amount of additional direct costs in-

curred by all local governments in such State in complying with such regulation in such fiscal year.

(B) Each State government which receives payments under this section for any fiscal year shall provide by law for the estimation of the amount of additional direct costs incurred by each local government in such State in complying with an intergovernmental regulation for which such payments are received. In providing for the estimation of such costs, the State shall establish procedures and methods for the estimation of such costs which are reasonably related to the actual additional direct costs incurred by such governments in complying with such regulation in such fiscal year.

(d) This section does not apply with respect to an intergovernmental regulation which will be in effect during a fiscal year if, with respect to such intergovernmental regulation and such fiscal year, a joint resolution has been enacted in accordance with section 211(b).

SEC. 215. No law enacted after the date of enactment of this joint resolution shall supersede the provisions of this subpart unless such law does so in specific terms, referring to this title, and declares that such law supersedes the provisions of this title.

PART C—MISCELLANEOUS

SEC. 221. Section 403(c) of the Congressional Budget Act of 1974 is amended by striking out "$200,000,000" and inserting in lieu thereof "$100,000,000".

[From the National Journal, Oct. 4, 1986]

MANDATES WITHOUT MONEY

(By W. John Moore)

In St. George, Utah, federalism has become a losing proposition. As the cost of complying with federal regulations skyrockets, city officials have discovered, the level of federal financing for those programs has nosedived.

St. George faces possible fines of up to $25,000 a day because of a violation of the permit for its sewage treatment plant. Efforts to build a new plant are behind schedule, and city officials fear that means the city will miss the Environmental Protection Agency's (EPA) July 1, 1988, deadline for meeting clean water standards. The city had hoped to receive some federal aid to build the plant, whose price tag is $13 million. Until several years ago, EPA paid 75 per cent of sewage plant construction costs to help cities meet national clean water goals. But Reagan Administration penny-pinchers want to phase out the costly grants. After spending $100,000 to qualify for aid, St. George officials doubt any money will be forthcoming.

"We've been chasing after EPA dollars for years," city public worked director Larry Bulloch said. "It's like a carrot on a string; we just never catch up with it."

Part of the city's frustration, as well as part of the high cost, can be blamed on the woundfin fish. The woundfin, about the size of a thumb, is covered by the federal Endangered Species Act, and protecting the woundfin could add as much as $2 million to the plant's price tag.

"Of course, it bothers people," Bulloch said. "But we're talking about the federal government. What can a community of 20,000 people do about it?"

Like other cities, counties and states, St. George faces a future stuffed with federal requirements but starved for the funds needed to meet those national standards. "While mandates remain, the federal funds to implement them become ever more scarce," the National Association of Counties (NACo) has warned Congress. "It's a shell game," complained J. Ron Fahs, director of intergovernmental relations in Florida's office of planning and budgeting.

Laudable as many of the federal requirements may be, state and local governments have resisted what they perceive as a fundamental shift in the rules of federalism. Romanced with billions of dollars in grant money, promised an enduring commitment based on a sharing of responsibilities, state and local governments now feel jilted by their federal partner. Like any domestic dispute, this one has degenerated into ugly recriminations over money.

"Finances are at the heart of this dispute. Who is going to pay? When are they going to pay? How are they going to pay?" said Joseph F. Zimmerman, a professor of political science at the Graduate School of Public Affairs at the State University of New York (Albany).

The impact of federal requirements on state and local budgets has become more pronounced as federal assistance has dwindled. For example, a 1985 study conducted by NACo on general revenue sharing said that 66 per cent of the counties used these federal funds to help meet a variety of federal mandates, including environmental, health care and criminal justice regulations as well as requirements for transporting and handicapped. Yet local governments face the imminent loss of $4.6 billion in revenue sharing money.

Federal aid for urban programs has been slashed by 60 per cent over the past five years, and tax reform is making it tougher for cities to raise capital. Local and state officials believe the federal government is trying to solve its own budget problems by dumping costs on the cities. "We are being placed in an untenable box that will mean financial crises for many cities before very long." said Cathy Reynolds, a Denver city council member and first vice president of the National League of Cities. "Federal mandates could prove to be the straws that break the backs of local governments," she said.

State and local governments say that the blame for their federalism problems doesn't rest on the shoulders only of Congress and the Reagan Administration. Federal courts are increasingly willing to endorse federal preemption of state and local laws. In a 1985 decision, the Supreme Court ruled that under the Constitution, no sphere of activity is specifically left to the states. However, the Court said, Congress may specifically restrict the federal government's authority.

"It's like an octopus. There are an awful lot of arms out there" putting the squeeze on state and local governments, said Scott Dix, a legislative assistant to Sen. Mack Mattingly, R-Ga.

The outcry over cuts in federal aid and boosts in federal requirements has prompted calls for new legislation and regulatory relief. A bill (S. 2387) introduced by Sen. Dave Durenberger, R-Minn., would require the federal government to reimburse state and local governments for the costs imposed by new regulations. The provision could be waived if two-thirds of the House and Senate approved the new rules. The bill also would require the Congressional Budget Office and the Office of Management and Budget (OMB) to prepare an annual report listing all existing intergovernmental regulations and estimating the cost of any new rules.

The Durenberger proposal "ties the pleasure of the mandate to the pain of fiscal accountability," said F. John Shannon, executive director of the Advisory Commission on Intergovernmental Relations (ACIR). Gwendolyn S. King, deputy assistant to the President for intergovernmental affairs, suggested that the Administration found much to admire in the bill. But OMB officials are wary of any efforts to shift costs to the federal government.

Despite complaints about the cumulative impact of federal requirements, no one has a precise estimate of the cost to state and local governments. "We say hundreds of mandates at a cost of millions of dollars," stated a NACo letter, but "it could be thousands of mandates costing billions of dollars."

Relying on a 1984 study by the ACIR, most local government organizations have pegged the cost at about $200 billion a year. A June 1986 study done for the National Conference of State Legislatures by Robert L. McCurley Jr. of the Alabama Law Institute listed 145 federal laws enacted since 1972 that require state action.

FEWER FISCAL LINKS

Almost six years ago, New York Mayor Edward I. Koch warned cities and states about what he dubbed "the mandate millstone." Legislation and regulations engendered by the social concerns of the 1960s and the environmental activism of the 1970s were colliding with renewed concern about fiscal restraint. "The result has been an ever-widening gulf separating the programmatic demands of an activist Congress from its concurrent fiscal conservatism," Koch wrote in the magazine *The Public Interest.*

The Reagan Administration took power in 1981 vowing to free state and local governments from the entanglements of the most burdensome federal mandates. Regulatory reform, especially as it applied to state and local governments, was expected to become a key Administration initiative. The Presidential Task Force on Regulatory Relief claimed victory in August 1983, estimating that 25 percent of its efforts benefited state and local governments.

Michael Fix, senior research associate at the Urban Institute and the co-author of a book on deregulation, emphasizes that state and local governments obtained major regulatory relief from the Administration in the early 1980s.

Nevertheless, an April 1984 study conducted by ACIR concluded that federal statutes and regulations continued to place financial and administrative burdens on states, cities and towns.

These mandates come in a variety of flavors. Some are imposed under federal laws requiring states to administer a variety of social programs, such as parts of medicaid and medicare. But most mandates are the result of state and local governments' unquenchable thirst for federal dollars. To qualify for federal grants, states, towns and cities have agreed to meet the conditions for the programs that were established by the federal government.

A Faustian bargain, some critics believe, but a pact that state and local governments were more than eager to make. For example, to continue receiving federal highway funds, states must agree to a 55-mile-per-hour speed limit. The Federal Aviation Administration has made expansion of airport ground facilities a condition of receiving federal aid for municipal airports. An estimated 59 regulations, so-called cross-cutting

requirements, include federal mandates for programs that do not directly receive federal money.

The most unpopular federal mandates simply order state and local governments to comply with certain national objectives or to administer federal statutes. The Supreme Court's 1985 ruling in *Garcia* v. *San Antonio Metropolitan Transportation Authority* said that state and local governments must comply with the 1974 Fair Labor Standards Act, including its overtime provisions.

Congress and the White House historically linked direct mandates to state and local governments with the carrot of federal aid. According to a 1985 study by Robert P. Inman of the University of Pennsylvania's Wharton School, federal aid to state and local governments grew from $66 per capita in 1960 to $192 per capita in 1980, and most of the aid imposed federal requirements on the recipients.

Yet state and local government officials fear the precepts of federalism will be sacrificed to meet federal budgetary concerns. Unwilling to spend federal dollars for national priorities, yet unable to abandon those goals, the federal government has discovered it can rely on unfinanced mandates to accomplish its purpose.

"The booming message coming out of the mandate field right now is the wide-spread fear on the part of state and local policy makers that Congress will now try to do with mandates what in the old days it did with grants, and force states to carry out national priorities," the ACIR's Shannon said. "With grants, at least the states were bribed. Now it would just be the flexing of regulatory muscle on the part of the federal government."

Federal aid to small local governments was reduced by 24 percent from fiscal 1980–85, and an additional cut, from $4 billion to $1.6 billion, was proposed in the Administration's 1987 budget, according to a recent study by the National Association of Towns and Townships. But Congress has not gone along with all those cuts. "It is an effort to fundamentally change the character of American federalism," the report said. "While national-local fiscal links are being sharply reduced, national-local policy and programmatic links remain," the report added.

Congress already has discovered that state and local governments offer a way to loosen the federal government's fiscal straitjacket. This year, Congress passed a bill mandating medicare coverage for state and local workers hired after April 1, 1986. The governments and the new employees must pay a tax equal to 1.45 per cent of the new worker's salary. The law will cost state and local governments an estimated $250 million over three years but allow the federal government to collect an extra $500 million. Critics of the law believe that the cities and states are bearing the brunt of efforts to ensure the financial soundness of medicare. But some medicare experts disagree, noting that state and local employees should be treated similarly to other workers.

A similar proposal being considered by a conference committee would mandate medicare coverage for all 3.5 million state and local employees, at a cost of $3 billion-$4 billion over three years. Proposals to mandate social security coverage for state and local employees are also expected soon.

Even the war on drugs, which is now virtually a crusade on Capitol Hill, sparked some conflicts over who should bear the cost of combat. Because the cities are the crucial battleground, mayors and local officials pressed for enough federal assistance to match the rhetoric coming out of Washington. Yet the House Judiciary Committee voted to cut grants for drug enforcement programs from $625 million to $100 million in 1987. After a full-court press by the mayors, the House approved $695 million.

A bill (HR 1309) approved by the House Education and Labor Committee would require employers to provide testing, evaluation and medical monitoring of current and former employees who are susceptible to a dangerous disease. Although the bill was drafted to protect workers exposed to hazardous materials, firefighters and police officers—because of stress and the physical demands of the job—would also be considered to be in a high-risk job.

SEWAGE TREATMENT

That many mandates have laudable goals only makes the issue more troublesome for city officials. "A very unfortunate aspect of all this is that we can't reasonably argue to remove the mandate," Charleston (S.C.) Mayor Joseph Riley said, because the federal government in many instances if properly acting to solve pressing national problems. Yet budgetary restraints on cities and towns make it almost impossible to accomplish these goals. The solution, Riley insisted, is more federal money to accompany the federal mandates.

Perhaps nothing demonstrates the problems and constraints better than the ongoing dispute over municipal wastewater treatment plants. Since 1972, EPA has ordered new city treatment plants to comply with the Clean Water Act. As an incentive, the federal government provided 75 per cent of the construction costs. From 1972–82, the government spent $56 billion on construction.

After several extensions, EPA now has established a July 1, 1988, deadline for compliance with the act. But more than 2,930 projects have yet to be financed, at a total estimated cost of $19.4 billion. Despite EPA's deadline, the Administration has requested sharp reductions in federal money for the program. The federal government's share was reduced from 75 to 55 per cent several years ago, resulting in $2.4 billion in federal aid annually. Because of a dispute over future construction grants, only $1.8 billion has been released in 1986.

EPA has estimated that cities must spend $108.9 billion on sewage treatment plant construction to meet the mandated requirements by the year 2000. But the Administration, which intends to phase out the construction grant program by fiscal 1990, wants to provide only $27.6 billion from now until 2000, about $80 billion less than the cities need.

"The gap between funding and the federal requirements will widen considerably," warned Roberta Savage, executive director of the Association of State and Interstate Water Pollution Control Administrators.

But EPA officials and some environmental activists blame recalcitrant cities for the predicament. Lawrence J. Jensen, EPA's assistant administrator for water, said that cities have made less progress than industry in meeting Clean Water Act requirements. Although the construction grants are a crucial part of the program, he said. Congress never linked compliance to the federal dollars. "Whenever there are federal dollars for assistance in a federal program," Jensen said, "the expectation grows that you can just wait for the money."

Daniel Weiss, a Washington representative of the Sierra Club, blames the cities for their shoddy compliance record. Some cities "squandered their money," he said. Just because the cities made poor management decisions, "there is no reason why we should delay environmental protection standards."

But meeting EPA's deadline with reduced federal aid is expected to pinch a number of cities. "Our needs far outstrip available funding," said Don A. Ostler, a manager in the engineering and construction grants section of Utah's Water Pollution Bureau. Utah cities will need about $800 million to meet wastewater treatment needs through the year 2000. The state, Ostler said, currently receives $12.9 million annually from EPA. At that aid level, about 18 of the state's 30 top priority treatment plants would meet EPA's deadline. With no federal money, few, and perhaps none, of the plants would comply with the statutory mandate, Ostler said. One solution is much higher user fees. The new tax reform package only adds to Utah's woes. Its limits on tax-free bonds, Ostler said, will hurt the state's ability to finance wastewater plants.

Minnesota officials predict an equally bleak scenario. EPA money under the construction grant program typically went to the state's largest cities. Now much of the money is gone, but 180 small municipalities still face the 1988 deadline. "The costs will be devastating if they have to meet them on their own." said Donald A. Slater, the executive director of the League of Minnesota Cities.

Slater hopes the state may provide some financial aid, but funds from a special cigarette tax (earmarked for sewage projects) have dropped from $24 million to $11 million, with much of the money having gone to projects in big cities. Slater said that EPA continues to insist on the 1990 deadline while federal aid is being slashed. "I can't believe the national fiscal situation is so bad" that the agreement to provide construction grant money must be violated." he said.

But the wastewater issue could soon be dwarfed by a growing dispute over stormwater runoffs. EPA estimates that there are one million stormwater sewers nationwide, and each has to have a permit. EPA sampling and testing requirements could cost cities $8.5 billion, with the federal government contributing no funds. Some city and state groups are mollified by a compromise worked out with EPA in August. The accord would sharply reduce the number of stormwater permits required. But Savage of the state water pollution administrators' group remains worried. "No matter what the resolution of this issue * * * it will be a tremendous drain on state and local resources," she said.

One purpose of the Durenberger bill is to cushion these fiscal blows. "In this time of budget belt-tightening for all levels of government, it is important for the federal government to accept fiscal responsibility for rules and regulations it imposes on state and local governments," Durenberger said in introducing the legislation in April.

At least part of Durenberger's approach was strongly endorsed by White House adviser King. If Congress passes a law that "requires a significant outlay by state and local governments . . . that the federal government ought indicate how they are going to appropriate money or how the states will be reimbursed," King said.

Despite the growing concern about mandates, some intergovernmental experts be-

lieve the current problems will solve itself. "As federal funding declines, you lose the political constituency and the rationale to make the mandates politically viable," said Timothy J. Conlan, legislative aide to the Senate Governmental Affairs Subcommittee on Intergovernmental Relations. But under another scenario, Conlan said, as new budgetary constraints take hold, and Congress discovers that the tax code is now useless to accomplish policy goals, "what you're left with" are regulations imposing costs on the states.

Localities Hold States Accountable

In 1979, Rhode Island enacted a statute requiring that local governments be reimbursed for costs imposed on them by state laws. "Mandated cost reimbursement has changed the way state government thinks in Rhode Island," Kenneth F. Payne, executive director of the Rhode Island League of Cities and Towns, told the Senate Governmental Affairs Subcommittee on Intergovernmental Relations last year. State legislators and state agency personnel now understand, he said, that "if we play, we pay."

Rhode Island is one of a growing number of states that have decided to foot the bill for laws and regulations that increase local governments' costs. Twelve states have incorporated the concept in their constitutions, including California, Massachusetts, Michigan, New Hampshire and New Mexico.

As a result of these changes, say state and local officials, states have become wary of enacting expensive legislation or of intruding into purely local affairs. In Rhode Island, Payne noted, total reimbursements to localities have yet to reach $100,000 annually.

"It prevents the birth of new legislative initiatives because the price tag is too high," added F. John Shannon, executive director of the Advisory Commission on Intergovernmental Relations.

Republican Gov. John H. Sununu believes New Hampshire's constitutional amendment has forced some additional fiscal restraints on the state. "It has made the legislature a little more sensitive to what it's doing, and in that respect, it is very, very good," he said.

Yet state constitutions have not always protected local governments from unwanted mandates or forced the states to repay cities and towns for the costs of the new statutes or regulations. According to the Michigan Municipal League, loopholes and exemptions in constitutional amendments can encourage state legislative actions. For example, the Michigan constitution allows the Legislature to impose mandates on local governments if the statute also applies to private industry.

Efforts made to recoup costs have not been uniformly successful. "Absent either legislative or judicial declaration, there tends to be confusion and uncertainty as to whether local officials should ignore a state mandate until an appropriation is made and disbursed, submit a claim to the state for reimbursement of the costs of complying or litigate the question," according to the Michigan league's statement before the Intergovernmental Relations Subcommittee.

In states such as Florida, which have yet to restrict state mandates, it becomes difficult even to determine the fiscal effects of new legislation on cities and towns. The Florida Advisory Council on Intergovernmental Relations, in its report on the state's 1985 legislative sessions, determined that 35 new mandates were imposed on local governments last year by the federal government. The known cost of the 1985 mandates was $20.5 million, according to the council, but there are hidden costs too. Many of the new laws imposed procedural demands on local governments. Others limited these localities' ability to generate revenues. Only a few established new program requirements and left the financing to the municipalities.

Nevertheless, the report concluded, the enactment "of mandates which impose largely unmeasured costs on local governments remains an issue of great concern to the council and is a source of continued contention between the state and local governments."

Sending a Message to Washington

Maybe it's the abundant rainfall, but Oregon has always produced a bumper crop of independent politicians. Feisty former Democratic Senator Wayne Morse opposed the Vietnam war. Former Republican Governor Tom McCall fought just as hard and even longer for land use restrictions and environmental laws. Less a maverick and more the pragmatist, Gov. Victor G. Atiyeh nevertheless dismayed some fellow Republicans in 1982 when he wrote President Reagan to say he was "greatly disturbed and saddened" by the Administration's economic policies and their impact on the state.

"When the economy cools off, Oregon gets pneumonia," Atiyeh wrote in a caustic letter to Dave Stockman then the director of the Office of Management and Budget.

Atiyeh is also the governor complaining the loudest about federal red tape. Not content with just griping about the costs and administrative burdens that have been foisted on the state by the federal government, Atiyeh ordered department heads to identify the most obnoxious federal requirements and to suggest possible changes. In April, Atiyeh wrote another letter to Reagan listing 28 specific changes that federal agencies should adopt to reduce costs. The changes, Atiyeh said, would "assist Oregon in its goals of supporting federal debt reduction, while maintaining high-quality services to its citizens."

The biggest complaint was about the federal government's excessive monitoring, reviewing and auditing of state programs. Also, he said, most federal bureaucrats fail to understand that state laws and regulations can be as effective as federal requirements. Another problem stems from the federal government's insistence that annual contracts, including data already furnished, be resubmitted each year, Atiyeh told Reagan.

What irks Atiyeh the most is the federal government's attitude toward the states, which receive a shrinking amount of federal largesse. Unlike foreign aid recipients, which are sent billions of dollars with no strings attached, Atiyeh said in an interview, the states are treated "as if we are crooks who must be watched like hawks.

"I have said repeatedly, give me a goal. Don't tell me how to do it, just see if I meet that goal. . . . But that is not a message that has been received very well in Washington, D.C.

The 28 recommendations were an attempt to go beyond generalities and identify specific regulations that the federal agencies could correct. The report hit a number of federal agencies. Administrative changes in the Labor Department's unemployment insurance programs could produce $10 million-$25 million in annual savings nationwide, the report contended. The state's health division contended that Oregon could save $200,000 annually if the Health and Human Services Department's Health Care Financing Administration (HCFA) accepted Oregon's licensing programs for medicaid and medicare as the basis for federal certification when state requirements meet or exceed federal standards.

The state's Human Resources Department said Oregon and the federal government could save money by placing more elderly patients in their own homes rather than nursing facilities, but HCFA has imposed tough requirements to otain the necessary waiver for home-based treatment. "We've been stymied just about every step of the way by these federal regulations," Dick Ladd, the administrator of Oregon's senior service division, said even though providing nursing home care is three times more costly than providing the same services at home.

Social Security Administration rules forcing states to investigate potential fraud in food stamp and welfare fraud programs don't make much sense, argue Oregon officials, who nevertheless pursue possible incidents of abuse because failure to meet specific aduit requirements in 75 per cent of child support cases, for instance, could cost the state more than $7 milion in penalties annually. Yet the federal government has cut back financing for enforcement, raised performance standards and increased penalties. Is this a better management system, asked Keith Putman, administrator of Oregon's adult and family services division, or does it "serve the purpose of fining the states for the betterment of the federal Treasury?"

Atiyeh acknowledged that he has not yet received a response from the White House. But Gwendolyn S. King, deputy assistant to the President for intergovernmental affairs, says the various federal departments are reviewing the governor's letter, "This is a thorough attempt by a state administrator to really respond to the kind of problem they face at the state level because of federal requirements," King said, "even if only a handful of his suggestions are ever worked out."

BUDGETS FOR SELECTED MAJOR INTERGOVERNMENTAL REGULATORY PROGRAMS INCLUDING DIRECT INTERGOVERNMENTAL AID

[In constant dollars (1980=100), fiscal years 1980–85]

	1980	1985	Percent change 1980–85
Bilingual education	166.9	105.8	−36.6
Clean air	290.1	183.5	−36.7
Clean water (total)	2,864.9	2,018.0	29.5
Direct assistance	2,591.9	1,874.4	−27.6
Handicapped education	874.5	862.7	−1.3
Occupational safety and health	166.0	167.2	+1.0
Resource recovery and conservation	109.8	127.1	+15.8
State administrative grants [1]	18.1	43.3	+39.2
Safe drinking water	79.3	77.7	−2.0
State administrative grants [1]	39.4	35.0	−11.0
Surface mining	180.0	250.8	+39.3
State administrative grants [1]	28.0	267.0	+787.0

[1] For any given year totals may vary due to change in the number of States administering programs.

Source: U.S. Budget. Constant dollar totals were computed using gross national product deflations based on calendar year 1972 prices as developed by the U.S. Department of Commerce, Bureau of Economic Analysis.

Answers to Common Question About Mandate Relief Amendment

"What is a mandate?"

A mandate is a provision of statute or a regulation promulgated pursuant to such a

statute which directs states or local governments to meet nationally-determined standards, without funding to meet the additional direct costs of implementation. A mandate is not a condition of aid either embedded in a statute or promulgated as a regulation pursuant to such a statute. These regulations are rightly considered part of a contract between the federal government and our partners in the federal system. These are the so-called strings the national government places on state and local governments as direct conditions of receiving a particular federal grant-in-aid.

"What effect will the mandate relief amendment on vital regulatory programs currently implemented by State and local governments?"

This amendment will make it easier—not harder—to accomplish national goals such as those for clean air and water, for handicapped education, and for civil rights. There are two reasons why:

My subcommittee on Intergovernmental Relations has held extensive hearings on Mandate Reimbursement over the past two years. The ACIR has published a 300 page report on Mandates. Countless experts have written books on why we so often fail to achieve important regulatory objectives. All of this research and hearings show that too many unfunded federal mandates undermine our best efforts to accomplish regulatory objectives because taken together they place too such stress on our partners in the federal system.

First, There is not enough money in the system to meet regulatory requirements. As state and local officials race to meet the demands imposed by hundreds and hundreds of these mandates, they lose opportunities to work on the truly important ones. For example, research conducted by the Water Pollution Control Federation concluded "The rate of cleaning up municipal water pollution depends almost completely on the availability of federal money." That's just one example; during the hearings I chaired I have heard dozens of similar conclusions for many other important programs.

The answer is not to spend more money at the federal level. We can't afford that. The answer is to set our priorities and to stop giving in to the urge to pass unfunded mandates for everything under the sun—as a freebie for every special interest group that walks into our offices. In short, this amendment helps us fend off these attacks by helping us to weed out pointless, unjustified mandates.

Second, weeding out unjustified mandates is critical because such mandates compete for scarce State and local resources. A small city spending money backfitting its entire fleet of buses with handicapped lifts when a para-transit system would cost less and work better, is prevented from spending that money on wastewater treatment. It's that simple.

At some point rational priorities have to be established. State experience with identical mandate reimbursement programs such as in California, Massachusetts, Rhode Island shows that such programs can help separate the wheat from the chaff. Let me quote the Comptroller for the State of California on this point. "The mere existence of the mandated cost program has forced the state legislature to be more cost conscious. With limited revenue sources, they now prioritize their needs much more carefully which has resulted in numerous proposals of less merit being dropped or cumbersome administrative requirements being simplified or deleted."

Let me quote from Massachusetts: "Intergovernmental relations are enhanced, thus facilitating implementation of state programs at the local level. The state mandated program is forcing the state government to consider the cost impact of proposals before they are passed. It is making us establish priorities and live within these priorities."

Or from Rhode Island, "It is good preventive medicine that is actually helping us to get the important jobs done."

So to those who rightly ask, "How will this amendment help us to get our drinking water supply free of pollution or our handicapped children the education they deserve, or our local police out from under paperwork and on to the streets to fight drugs?" The answer is this: "The best thing you can do to advance all of these important regulatory goals is to vote for—not against—my amendment."

"Won't mandate reimbursement cost too much?"

Both common sense and state experience with similar mandate reimbursement programs give the same clear answer to this question: "No!" This is true for two reasons. First, many mandates do not impose excessive costs overall, and these can easily be absorbed by the current federal budget. The problem here is that even relatively small regulations can pose insurmountable burdens for small, rural communities. Second, for those mandates that do impose extraordinary costs, this amendment will help Congress set clear priorities to focus resources on compelling national needs.

In the case of small communities, the problem of federal mandates often stems from the limited size of their revenue base. Such communities generally have small budgets and only a few permanent or part-time employees. For these governments, even regulations costing only a few thousand dollars can absorb a large percentage of the total budget.

In recent years, these inherent budgetary constraints have been exacerbated by federal aid reductions and depressed economic conditions. Small communities have been hardest hit by the termination of General Revenue Sharing. GRS comprised just 22% of total federal aid to all local governments, but 45% of total federal aid to small communities in agriculturally-dependent counties.

These small communities have also been the targets of other federal aid reductions. While federal aid levels to most local governments have remained virtually unchanged since the big cuts enacted in 1982, federal aid to rural communities fell an additional 18% between 1982 and 1985.

Finally, reductions in federal aid have been aggravated by declining economic conditions which have further eroded local revenue sources. In the farm belt, the disastrous declines in farm land values are undermining local property tax bases. In Minnesota, the price of farm land has fallen 50% since 1981, and property tax assessments have fallen 25%. Other farm states are experiencing similar declines, as are local governments in oil-producing states.

Thus, even modest mandates can pose major problems for small communities. Examples include:

OSHA requirements for volunteer fire departments: Across America, new OSHA requirements are forcing small towns and townships to buy expensive new fire-resistant suits for their volunteer fire fighters. Equipment that had been considered perfectly adequate is no longer acceptable.

For the small town of Underwood, Minnesota, this regulation may require disbanding the volunteer fire department altogether—giving up all fire protection for the community. The new suits cost $3,000 apiece. That's thirty thousand dollars for ten volunteers. Underwood simply doesn't have it. Property tax receipts are down. Delinquencies are up. The town had planned on using its small GRS allotment to help cover the cost, but now that has been eliminated. Underwood is out of luck, and so are many other small towns and townships nationwide.

Handicapped Access: In other small communities, the most costly mandate facing them are federal standards for handicapped access to public facilities. The problem is not one of providing the access to the handicapped. All Americans share this goal and most small towns have developed workable plans to acomplish it. The problem for small communities is excessively stringent federal standards.

For example, in one North Carolina county, the county seat was instructed to put an elevator in the county court house to provide improved access to the second floor. The county agreed and proceeded to contract for a $28,000 elevator to be built in the court house. $28,000 was a major expenditure for this small county, but county officials agreed it was the right thing to do.

After examining the county's plans, however, federal officials rejected this response and forced the county to purchase a larger elevator costing $100,000—more than three times the original amount!

So, for countless small requirements like these, the costs borne by the federal budget will not be large, but they will make all the difference to small communities.

For larger mandates which entail billions of dollars of added costs for state and local governments, this amendment will finally force the national government to set responsible regulatory priorities.

This has been the state experience in those states which operate mandate reimbursement programs. For example, in the state of California, officials of the state controller's office testified that the mandate reimbursement law has been successful by "making us establish priorities and live within those priorities." In Rhode Island, the law "has not resulted in the state forswearing its responsibilities." Instead, it has promoted "a more participatory process," where state and local officials come together to discuss and establish priorities.

The same process will occur at the federal level under the mandate relief amendment. The federal government already acknowledges the need to provide funds for many costly mandates, knowing that this is the only way to achieve regulatory goals. That is why the federal government has spent several billion dollars on wastewater treatment grants. It also explains why Congress is prepared to enact a new Superfund program for hazardous wastes.

The trouble arises with unfunded mandates, where states and localities are simply told: "You do it," and no funding is provided. This amendment will prevent such budgetary end runs and subject every new mandate to the discipline of the budget. Like all other programs in the budget, Congress will have to decide how important the goal is when allocating budgetary priorities.

How do we know this reimbursement program will work?

The Senate Intergovernmental Relations Subcommittee held two days of hearings in 1985 which examined state programs to reimburse local governments for the costs of

state-imposed mandates. The Subcommittee found state experience administering such programs was overwhelmingly positive. In California, the state controller concluded that "our state benefits from the program." In Massachusetts, the state auditor testified that "Our approach is time tested. It is very simple and very clearcut." The word from Rhode Island was: "This is a good rule."

The Subcommittee also found that state mandate reimbursement programs have not been inordinantly expensive. In Massachusetts, the state has actually saved money by weeding out unnecessary regulations. As the Massachusetts auditor testified, "The total cost of the mandates is just slightly in excess of $7 million. The savings to the state have been much higher."

In California, the state maintained its reimbursement program "even when the state was basically broke back in 1983, because we believe the benefits outweigh the costs."

RECENT EXAMPLES OF REGULATORY UNREASONABLENESS

INTERNAL REVENUE SERVICE

The IRS mandates that for every unmarked city vehicle that is used by a city employee while not on duty, the records must be kept by the employer and the employee. Here's how that plays out at the local level: In many small towns across this country, the director of public works doubles as the crew of public works. Now, that means—among other things—that the public works director is responsible for manning wastewater treatment lift systems. There is no 24 hour-a-day crew to respond to emergencies. The public works director is it: he's the crew. In an effort to save time in emergencies, the public works director drives the public works crew truck home—that makes sense since the lift stations are not located at city hall. But, the IRS has little incentive to be reasonable. IRS regulations say that the public works director has to keep a daily record of this, and what's more, every day he doesn't use the truck for an emergency in off hours he has to pay $3.00. It's not enough that the public works director keeps records, the city clerk is also required to keep records—duplicates. And, if these people don't, the IRS might slap them with a fine.

MUNICIPAL STORM SEWER DISCHARGE PERMITS

In the Clean Water Act, requires municipalities to obtain a permit similar to those issued to waste-treatment facilities and major industrial plants for storm-water collection systems and conduct separate sampling and testing for each discharge point. This provision is now being debated in the House-Senate Conference. Thus far, attempts to modify this statutory requirement by allowing municipalities to use a general permit or to exempt separate storm sewers except in those cases where the EPA identifies a specific pollution problem have been unsuccessful.

Now, how many storm sewers are there in an average city? In fact, there are more than 1 million separate storm-water discharge points in the nation's 366 major urban areas, alone. The cost of sampling and analysis is estimated at $8.5 billion—roughly double last year's GBS funding. $8.5 billion to meet the implementation costs of only one mandate. What is more, city officials that fail to comply are exposed to criminal penalties of up to three years in jail and civil fines of $25,000 per day.

City officials are desperately attempting to negotiate a compromise. They are asking us not to be unreasonable. In the words of Cathy Reynolds, Vice President of NLC and councilwoman from Denver: "Please recognize the incredible cost in manpower and physical plant required to implement the program and diversion of limited resources now earmarked for high-priority water pollution control problems."

LABOR DEPARTMENT FAIR LABOR STANDARDS

One of the problems with mandates, is that when they are passed or the regulations are written, there is no flexibility given to state and local governments to adapt the spirit of the mandate—its purpose—to fit local conditions. Consider the situation in Santa Clara, California. City officials wanted to help low-and moderate-income senior citizens to do minor rehabilitation and weatherization of their homes. And, the city wanted to use a summer jobs program to do it. Seems reasonable. Get the kids off the streets and help out the old folks. The city couldn't get an exemption from Labor Department rules governing prevailing wages on federally assisted projects, however. Now, the city council was sad to learn that the kids would have to be paid union-scale wages because that added up to a lot of money and a lot of trouble. In the end, it just didn't seem worth it, so the city abandoned the idea: no summer jobs for the kids and no help for the senior citizens. The idea was certainly reasonable. But, the regulation was clearly unreasonable.

Mr. WILSON. Mr. President, I wish to join my distinguished colleague from Minnesota, [Mr. DURENBERGER] in the introduction of this amendment to provide regulatory relief to State and local governments from new Federal regulations.

The legislation is designed to bring a greater measure of fairness to the entire process by which this Congress seeks to impose its will and its judgment upon the States and local governments of this Nation.

Mr. President, the specific intent of this amendment is to require Federal reimbursement for any additional costs incurred by State and local governments in complying with new Federal regulations.

This legislation is especially timely as budget deficits continue to require reductions in Federal funds to localities and New Federalism has brought shifting roles. While the costs of mandates to State and local governments continue to rise, Federal aid to State and local governments has been reduced dramatically—down 24 percent in constant dollars since 1980.

The loss of general revenue sharing is the most visible example of this trend. The elimination of revenue sharing will be felt even more deeply than other Federal aid cuts because, increasingly, revenue sharing funds have been used to meet the costs of unfunded mandates. As new federalism evolves and State and local governments continue to shoulder increasing responsibilities and costs, Congress must not continue to add to the local government burden through new unfunded Federal mandates.

Mr. President, this legislation, no doubt, will make great sense to those of my colleagues who have, in their experience, spent some time in State or local government. Many times, my capacity as a State legislator, and even more so as mayor of a large city, I have questioned the judgment of legislators at the Federal level. I must confess, that at times I resented their having imposed not only their judgment but the cost of their judgments upon local taxpayers.

The principle involved here is simply stated: The Federal Government bears some responsibility to fund duties and requirements it chooses to mandate upon State and local governments. This position has been strongly endorsed by many State and local government officials as well as numerous local organizations—the National Governors' Association, the National League of Cities, the National Association of Counties, and the National Association of Towns and Townships.

Unfortunately, I must add in all honesty that even State governments have been guilty of imitating the Federal level by imposing regulatory requirements upon local governments without the benefit of adequate funding. Some years ago, this practice of mandating costly regulations on local governments became intolerable in California. Finally, to cure its own sin, the State legislature enacted what was then called "Senate bill 90," which said very simply that the State shall no longer impose new duties and regulations upon local governments without providing the funds for the performance of those duites.

Mr. President, I can certainly understand why, at first glance, many of my colleagues might find this approach a bitter pill to swallow—particularly now when we are almost obsessed with discussions and policy aimed at reducing the deficit. However, this legislation does not add one penny to the Federal deficit, but simply will require the Congress to legislate more responsibly when contemplating the enactment of new regulations.

Let me say it simply: If, in our judgment, a particular responsibility to be discharged at the State and local level is important enough to merit the enactment of Federal legislation in order to require it, then, to this Senator, it seems only fair and right that such mandates should be accompanied by appropriate Federal funding.

In recent years, Congress has often responded to problems without providing the adequate funding to carry them out—present mandates are estimated to cost State and local governments billions of dollars each year. If we now require Federal reimbursement for all future Federal mandates, we shall reform our own lack of realism and work to slow down the prolif-

eration of regulatory requirements as well as bring relief, much deserved relief, to those who labor at the State and local level.

Mr. President, in this period of deficit reduction, such a measure would impose an obstacle to new regulatory requirements enacted by Congress. This amendment is not intended to undermine the goals of protective regulations and in those instances where it is deemed inappropriate for Congress to share in the costs of implementing regulations, a two-thirds vote in both Houses would waive the reimbursement requirement.

In 1981, the Advisory Commission on Intergovernmental Relations issued a report entitled, "Regulatory Federalism: Policy, Process, Impact, and Reform." I agreed with much of the report. It cites in detail, with many examples, precisely the kind of abuses which the Federal Government has been guilty with the best of good intentions. It may be helpful to close by quoting what the Commission has to say about its recommendations for full Federal reimbursement. I read from the report of the Commission on Intergovernmental Relations:

> The Commission strongly affirms the principle of Federal responsibility for mandated costs, but it has carefully tailored its recommendation to current budgetary realities and to the administrative difficulties posed by full reimbursement of all existing mandates. This recommendation is limited to costs imposed on State and local governments by future intergovernmental regulations. This restriction avoids excessive immediate demands on the deficit-ridden federal budget while simultaneously establishing an effective fiscal deterrent to future regulatory proliferation.

For all of these reasons, Mr. President, I am joining my colleague and friend, Mr. DURENBERGER, in sponsoring this amendment.

Mr. MATTINGLY. Mr. President, I rise in support of the amendment by the Senator from Minnesota. Over the past couple of decades, the number of Federal regulations imposed on State and local governments has skyrocketed. And I believe this is a serious problem.

Mr. President, there is a growing tendency in Congress to address desirable national policy objectives by imposing obligations on State and local Governments without providing offsetting Federal funds. Because of this, cities and counties are faced with the alternative of increasing revenues to fund these mandates or reducing an existing service in order to free funds to pay for the mandate.

Many of these legislative initiatives are sound Federal policy. However, in my view, it is irresponsible to impose new costs on local governments without careful analysis. Congress accomplishes very little when it refuses to provide funds for national objectives and then requires our constituents back home to pay the bill.

It is vitally important for the Federal Government to accept fiscal responsibility for these rules and regulations that are imposed upon these governments. This amendment will do just that. It will help to relieve this growing burden. And I think it's about time we did so.

I strongly believe it is unfair and unwise to reduce Federal aid to local governments without a corresponding reduction in costly bureaucratic redtape and requirements. It is time Congress reduced these financial burdens that are placed upon State and local governments. I urge my colleagues to join me in this effort and support this amendment.

Mr. ROCKEFELLER. Mr. President, I strongly support continuation of the General Revenue Sharing Program and believe this funding bill ought to have provided for it.

Local communities throughout the country depend on this assistance to support essential public services. Some healthy one can manage if the Federal payments are ended. But many local governments are in no position to raise the revenues that would be needed to make up the difference. Their only choice is to do without.

To give an example from my State of West Virginia: Smithers, in Fayette County, is a town of 1,600 people. Its unemployment rate is close to 20 percent. The area has lost population in recent years, and nearly one in every four residents is retired. This community does not have the option of raising taxes—its tax base is already strained to the limit. Without revenue sharing, Smithers would have to cut back—on police protection, road maintenance, trash pickups, services for the elderly. These aren't frills, Mr. President; they're functions of government no hard-pressed community should be forced to forgo.

I know that my distinguished colleague from Minnesota [Mr. DURENBERGER], a leading advocate of revenue sharing, would have offered an amendment to restore funding if he had thought it had a chance of succeeding. But that hope evaporated last week when the House Rules Committee refused to allow an amendment on revenue sharing. I respect the Senator's judgment that it serves no purpose to lose a vote now—that we should concentrate on laying the ground work for trying again next year.

The pending amendment recognizes that State and local governments face a burdensome revenue gap: that under the Reagan administration, responsibility for many Government programs has become increasingly decentralized while Federal aid has declined. Although the loss of general revenue sharing will certainly intensify these strains at the local level, this amendment gives some assurance to localities that they won't be forced by the Federal Government to assume new responsibilities unless the funding to carry out such activities is provided.

This may not offer much comfort to local areas facing layoffs of police and firefighters, closings of libraries and health clinics, and other cutbacks in public services as a result of the discontinuation of revenue sharing. In West Virginia this is truly a losing proposition: our communities cannot raise taxes enough to cover the loss of Federal aid, but they also cannot afford to let public services deteriorate. Our struggle to attract industry and jobs will be just that much harder if public facilities and services cannot be maintained.

But looking ahead, I would hope to join my colleague from Minnesota in an effort next year to develop a more targeted program of assistance to economically distressed areas of the country. In the meantime, I commend the Senator from Minnesota for this amendment and for seeking a means of limiting the damage to the fiscal condition of local communities.

FOREIGN AID REFORM

Mrs. KASSEBAUM. Mr. President, I offer an amendment, along with Senators LUGAR, PELL, KERRY, and ABDNOR to the continuing resolution which requests the President to undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961 and to send to the Senate Foreign Relations Committee and the House Foreign Affairs Committee by February 1, 1987, his recommendations for amending the act or otherwise modifying those activities.

The need for such a comprehensive review is clear. In view of the shrinking pool of foreign aid funds, there is a greater need than ever to clearly define the goals of the foreign aid program and to assure its efficient and effective administration. These are important issues even under ideal conditions. They become even more critical at a time where we now hear talk of the "crisis" is foreign aid.

In the absence of an organized review of the Foreign Assistance Act, we are witnessing piecemeal changes. The Foreign Relations Committee will be reviewing foreign aid authorizations next year even more intensely than usual in view of the acute budgetary shortages confronting the activities authorized under the Foreign Assistance Act. There is bipartisan support on the committee for working together on recommendations to improve the overall program.

We believe that this review would be enhanced and strengthened by the participation of the executive branch, and we are therefore asking, under this amendment, for their recommendations.

Mr. President, changing circumstances in the developing countries and the changing availability of resources from the United States require this comprehensive review. We ask the Senate's approval for requesting the administration's full cooperation and assistance in this important undertaking.

□ 1800

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the joint resolution.

The amendments were ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

Is there a request for the yeas and nays.

Mr. DOLE. 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 clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Oklahoma [Mr. BOREN] are necessarily absent.

The result was announced—yeas 82, nays 13, as follows:

[Rollcall Vote No. 330 Leg.]

YEAS—82

Abdnor	Gramm	Murkowski
Andrews	Harkin	Nickles
Bentsen	Hart	Nunn
Boschwitz	Hatfield	Packwood
Bradley	Hawkins	Pell
Bumpers	Hecht	Pryor
Burdick	Heinz	Quayle
Byrd	Hollings	Riegle
Chafee	Inouye	Rockefeller
Chiles	Johnston	Rudman
Cochran	Kassebaum	Sarbanes
Cohen	Kasten	Sasser
Cranston	Kennedy	Simon
D'Amato	Kerry	Simpson
Danforth	Lautenberg	Specter
DeConcini	Laxalt	Stafford
Dixon	Leahy	Stennis
Dodd	Levin	Stevens
Dole	Long	Symms
Domenici	Lugar	Thurmond
Durenberger	Matsunaga	Trible
Eagleton	Mattingly	Wallop
Evans	McClure	Warner
Exon	McConnell	Weicker
Ford	Melcher	Wilson
Glenn	Metzenbaum	Zorinsky
Gore	Mitchell	
Gorton	Moynihan	

NAYS—13

Armstrong	Grassley	Pressler
Baucus	Hatch	Proxmire
Bingaman	Heflin	Roth
Broyhill	Helms	
Denton	Humphrey	

NOT VOTING—5

Biden	Garn	Mathias
Boren	Goldwater	

So the joint resolution (H.J. Res. 738), as amended, was passed.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate insist on its amendments to House Joint Resolution 738, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed the following conferees on the part of the Senate: Messrs. HATFIELD, STEVENS, WEICKER, McCLURE, LAXALT, NUNN, COCHRAN, ANDREWS, ABDNOR, KASTEN, D'AMATO, MATTINGLY, RUDMAN, SPECTER, DOMENICI, STENNIS, BYRD, PROXMIRE, INOUYE, HOLLINGS, CHILES, JOHNSTON, BURDICK, LEAHY, SASSER, DECONCINI, BUMPERS, LAUTENBERG, and HARKIN.

Mr. STEVENS. Mr. President, I have been asked to put in the RECORD what the actual statistics are for the Senate's consideration of House Joint Resolution 738. In doing so, I think we must give great credit to the chairman of the Appropriations Committee, the Senator from Oregon [Mr. HATFIELD].

This measure has been before the Senate 5 days. It has consumed, as of 6:24 p.m. today, 43½ hours. There were 27 rollcall votes. The Senate disposed of 111 motions and amendments—agreed to 87, rejected 1, tabled 4, withdrawn 3, found 14 were out of order on a point of order, did not act on 2 because they were in the second degree.

□ 1820

This is the largest appropriations bill in the history of the Republic, because it contains all 13 appropriations bills in one comprehensive continuing resolution.

I think the Senate deserves credit for handling this massive funding measure for the Government in a businesslike manner and as expeditiously as it could have been done.

Mr. DOLE. Mr. President, will the Senator from Alaska yield?

Mr. STEVENS. I yield.

Mr. DOLE. Let me underscore the credit due to the managers of the bill. The Senator from Oregon, Senator HATFIELD, came in strong and finished with a weak voice but a strong finish and because of his determination, we were able to complete this bill which is rather remarkable. When you think of the size and scope of this appropriations bill, the fact that we have done it in 5 days, really probably more if you count the hours, but in 1 week's time is remarkable.

I also thank the distinguished Senator from Mississippi, Senator STENNIS, and the distinguished Senator from Louisiana, Senator JOHNSTON, members of their staffs on both sides and all other Senators on the Appropriations Committees and subcommittees and others who are worked during the process on reviewing the amendments trying to expedite the process.

It has made it possible to complete action on a very important piece of legislation, and I believe made it possible for us to leave sine die hopefully no later than next Thursday.

Mr. STEVENS. Mr. President, I yield the floor; and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the call of the roll be rescinded.

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

THE 1986 CONGRESSIONAL CALL TO CONSCIENCE

Mr. BAUCUS. Mr. President, I am pleased to join my colleagues in the 1986 Congressional Call to Conscience.

Recent events in the Soviet Union emphasize the repression and harassment that are part of the daily lives of many Soviet Jews.

These brave people are known as refuseniks. They are Soviet Jews who have been denied permission to emigrate, are harassed by the KGB, and are often dismissed from their work. They live in fear of arrest and imprisonment on trumped-up charges.

Gennady and Natalia Khassin of Moscow are one such refusenik family. Gennady Khassin graduated from Moscow State University in 1959, completed his thesis, Ph.D., in 1965, and now has 27 published works to his credit on projective and differential geometry. He worked and taught in various Soviet academic institutes and was associate professsor of mathematics in the Moscow Pedagogical Institute, but left this post in order to be able to emigrate. He worked as a teacher in a middle school from 1975 until 1977, but was nevertheless denied emigration on the alleged grounds of being a privy to secrets.

Gennady's wife Natasha worked as a computer programmer until 1968 and

organized and helped to run the kindergarten for refusenik children in Moscow. She was also one of the original 12 women who formed what was called the Women's Group in 1978. This group protested the constant refusals of emigration. The women felt that their protests would be less vulnerable to harassment and arrest than the male refuseniks.

The KGB had different ideas. Demonstrations by the group were constantly interrupted and the women were beaten, arrested, and taken to the Moscow suburbs, far from their homes, and dropped off.

The Khassin's home was searched and Gennedy was arrested and sentenced to 10 days imprisonment.

More recently the Khassin's have been offered a deal by the KGB: If Natalia admits her crimes in public, the family will get an exit visa. If she does not, they will not get a visa until the year 2000, or Natalia may be exchanged on the bridge as Anatoly Shcharansky was.

As always, the constant harassment continues.

The Khassin's story is not unusual. But today I am making a special appeal to the Soviet Government on behalf of the Khassins. I ask the Soviet leadership to give prompt attention to their case.

And I call on my colleagues to continue to bring the world's attention to these brave people.

CONGRESSIONAL CALL TO CONSCIENCE

INTERNATIONAL CANCER PATIENTS SOLIDARITY COMMITTEE

Mr. KENNEDY. Mr. President, the International Cancer Patients Solidarity Committee, unlike most organizations, hopes that it will disband soon. The committee consists of prominent cancer researchers and the families of five Soviet cancer victims. Its sole purpose is to bring five cancer patients from the Soviet Union to their relatives in the West.

The committee's first reward came on Monday, September 29, 1986, when Tatyana and Benjamin Bogomolny received their permission to leave the Soviet Union. Benjamin is the world's longest standing refusenik; he first applied for an exit visa in 1966. He and Tanya will join her father and sister in California which is particularly joyous for Tanya because she has had breast cancer since December 1985 and has no other relatives in the U.S.S.R.

While the exit visa is welcome news for the Bogomolny's, the remaining four cancer patients are still waiting. The plea of the International Cancer Patients Solidarity Committee is purely humanitarian. Their request is for these cancer victims to reunite with their relatives before their imminent death—during this difficult time of illness.

Rimma Bravve has advanced ovarian cancer. In February 1979 Rimma, her husband Vladimir, her sister and her parents applied for an exit visa. While they were waiting for a response, Rimma's father died of cancer. Although Rimma's mother and sister were given permission to leave, Rimma and Vladimir were refused because Vladimir's father had second-level security clearance before his retirement.

In February 1984 Rimma was diagnosed with metastatic cancer of the ovaries. She then had surgery and has been given chemotherapy and radiation treatments ever since. At this stage in her illness, it is especially important that Rimma be able to join her mother and sister in Rochester, NY.

Inna Meiman's health is also at a critical stage. Over the past 2 years, Inna has had four risky, painful operations to remove cancerous tissue on her neck. Her case has become increasingly desperate since Inna was diagnosed as having soft tissue sarcoma, a severely debilatating cancer. Soviet doctors have told Inna that they can provide no further treatment for her condition.

Inna's husband, Naum, is an internationally recognized authority in mathematics and elementary particles. Professor Meiman has been refused an exit visa on the pretext of being in possession of secret information. He joined the Moscow Helsinki Watch Group in February 1977 and was an active member until September 1982 when the group dissolved. Since 1983, Naum has been trying to bring his wife to the West for alternative treatment for her condition. He hopes for them to join his daughter, Olga, who now lives in Colorado.

Leah Mariasin discovered a growth on her head in 1980 that was diagnosed as a myeloma. She had an operation in September 1981 and now has a tumor on her back as well. She has been told that there is no further treatment available for her.

Leah, her husband Alexander, and their daughter Faina applied for an exit visa in 1972 in order to live with their eldest daughter Rita in Israel. Leah is particularly desperate to see her daughter before she dies.

Fourth, Dr. Benjamin Charny is hoping to join his brother Leon in Needham, MA. Dr. Charney is suffering from skin cancer and has had two recent heart attacks. He also recently developed a growth on his thyroid gland.

Dr. Charny is an ex-mathematician. His wife Yadviga and daughter Anna first applied for an exit visa in 1979. Their application was denied on the basis that Benjamin had done classified, high security work. However, he has not worked with classified information since 1971.

Leon Charney, Benjamin's brother in Massachusetts, is the official spokesperson for the International Cancer Patients Solidarity Committee. He is pleased that the Bogomolny family will reunite soon and hopes that the Bravve's, the Meiman's, the Mariasin's, and his own family will soon have the same good fortune. He stresses the need for these cancer victims to be allowed to come to the West for a second opinion and in some cases experimental treatment. Almost more importantly, these patients should be relieved of the stress that is caused by being so far from their immediate families.

The fight against cancer certainly transcends all political barriers. I wholeheartedly support the International Cancer Patients Solidarity Committee in their efforts to resolve the cases of these critically ill cancer patients.

TRIBUTE TO HARRY S. CARVER

Mr. WEICKER. Mr. President, I rise to pay tribute to Harry S. Carver, Comptroller of the Small Business Administration, who died suddenly on September 21. Harry was a superb public servant, who provided the committee with expert counsel.

Harry became Comptroller of SBA in 1980, shortly before I became chairman of the Senate Small Business Committee. Harry was much more than a "number cruncher". Harry Carver knew what SBA's lending, procurement and management programs meant to the small business community. Harry joined SBA in 1967 as a special assistant to the Assistant Administrator for Administration. His institutional knowledge of the agency's programs and its delivery system was invaluable as the committee sought to find ways to reduce SBA's expenditure without jeopardizing its statutory mission.

The last 2 years have been particularly difficult ones for those who worked for the agency. Harry Carver was a settling force during these tumultuous times. His sense of humor, his love of people, helped to keep a proper balance within the agency. Harry was able to walk the fine line of effectively advocating the President's budget, while ensuring the law was faithfully executed.

Harry's death was a severe loss to the agency. His life is an example for all those who wish to consider public service. Harry Carver made a significant contribution to this Nation. He will be missed by all those who worked to assist and promote the small business community.

MY heartfelt sympathy goes to Harry's wife, Betty and his three sons.

LITHOTRIPTER

Mr. HEFLIN. Mr. President, I wish to take this opportunity to commend the Department of Health and Human Services for its foresight and judgment in making available to our Medicare population a relatively new medical procedure which will not only reduce the cost to the program, but will spare untold thousands of our elderly the needless pain and suffering that accompanies major surgery. This laudable effect has been accomplished through the approval for reimbursement of a new major medical device, recently approved by the Food an Drug Administration, that offers a nonsurgical alternative to the traditional method of removal of kidney stones. While this alternative may not be available to every patient with kidney stone disease, former Secretary of Health and Human Services, Margaret Heckler, has hailed this device as an authentic modern miracle, which may keep 70 to 80 percent of all kidney stone patients from having to go under the knife for relief.

The machine is called a lithotripter and derives its name from the Greek words "lithos" meaning stone and "tripsis" meaning to crush. Instead of serious and dangerous surgery, patients recline in a tub of water and are subjected to carefully aimed shockwaves that shatter the stones into sandlike particles which can then be excreted in urine. What once could require up to 3 months or more of recovery from surgery can now be completed in as little as 3 days. The enormous potential for cost savings is obvious in a period where the Government and the private health care industry are looking closely at all aspects of health care in the hope of reducing expenditures. In addition to obviating the need for extended hospital stays during recovery, the Medicare Program will benefit due to the large number of Medicare patients who would require even more extensive medical services due to complications that would arise in a significant number of cases following surgery.

While I cannot overstate my praise for the Department of Health and Human Services' decision, I must express my shock and dismay at what appears to be the callous attitude of certain State Medicaid Programs. They have seen fit to exclude this cost and pain saving procedure from their indigent participants. This is discrimination since the indigent are generally not as educated as to the alternative medical treatment modes that could be made available and are forced to trust in the judgment of Medicaid officials. The decision of Medicaid agencies to subject the indigent population to the pain of surgery and the added risk of complication and death nearly amounts to a betrayal of the public trust. Unfortunately, the Veterans' Administration of our own Government has apparently not yet chosen to reimburse for this treatment of those who have given so much to our country. The kind of logic that allows the more affluent a less dangerous, less expensive, less painful procedure and shorter recovery period for this serious medical condition, while forcing veterans and the indigent to experience more risk, more pain, more taxpayer supported cost and longer recovery periods is not, and should not, be the proper method of health care delivery that this country endorses. The medical care of the helpless should not be callously rationed. I seriously hope the Veterans' Administration and State Medicaid agencies will reevaluate their priorities on this issue and not allow bureaucratic lethargy to cause needless waste and suffering.

TRIBUTE TO CHARLES RENTZ

Mr. HEFLIN. Mr. President, I was, indeed, saddened to learn of the recent death of Charles Rentz, of Linden, AL, who served in a truly outstanding capacity as the Marengo County circuit clerk for 30 years.

Any judge or lawyer will tell you of the importance of the office of circuit clerk. Because the judge does not always have time to keep track of every development in the cases before him or every motion which is filed, the circuit clerk will personally oversee much of this process. It is the duty of the clerk to maintain crucial files, documents, and briefs, to keep important records and to file reports at the county and State level regarding probations and indictments. Additionally, the clerk receives all moneys paid to the court in fines or bonds and attends all sessions of the court with the documents and files of the case in hand. After serving as both an attorney and as a judge, I can attest to the importance of this office, and Charles Rentz was one of the best. He did a tremendus job for the Marengo County Circuit Court. Through his long, loyal service he provided a continuity in the circuit that greatly helped all those involved in any case. His knowledge and experience was unparalleled and was a great asset to judges, lawyers, and to those involved in litigation.

Mr. Rentz was a remarkable man in every way. He was born without his hands. Yet, he did not allow this handicap to affect him or to impede his achievements or accomplishments. He fully participated in the beauty and fun of life. He enjoyed woodworking, he was a mechanic before he was elected as the circuit clerk. He liked to do things unassisted, not because he did not want help from friends, but because he kept his strength up by remaining active. He had a great determination and perseverance that enabled him to succeed when faced with any challenge.

Throughout his life, Charles Rentz distinguished himself in both his service to his community and to his State. He was involved both in the activities of his church and in many civic organizations of Linden. He also served as president of the Alabama Association of Clerks and Registers. I know that his family and many friends mourn his death, but they should be strengthened by the memory of his life and work. His example will serve as an inspiration to many.

Mr. President, I ask unanimous consent that an article which appeared in the Montgomery Advertiser be printed in the CONGRESSIONAL RECORD.

SERVICES SET FOR FORMER CIRCUIT CLERK

LINDEN.—Funeral services will be held Saturday morning for Charles Rentz, who served as Marengo County Circuit Clerk for 30 years.

Rentz, 80, died Wednesday night at a Selma hospital after a brief illness. He served as president of the Alabama Association of Clerks and Registers, was a Mason and in the Linden Lions Club.

Services are scheduled for 11 a.m. at Camp Ground United Methodist Church near Linden the Rev. John Vickers of Demopolis officiating.

Survivors include his wife, Wittle Rentz, of Linden; three daughters, Mrs. Herb McGee, Selma, Mrs. Don Meadows, Montgomery, and Mrs. Steve Hill of Birmingham; three brothers, W.G. Rentz, of Mobile, H.L. Rentz, and George E. Rentz, both of Sweetwater, one sister, Mrs. Rubye Lou Barkley, of Nashville, and seven grandchildren.

A HELPFUL SUGGESTION FOR SOUTH AFRICA

Mr. HEFLIN. Mr. President, in the recent past, people throughout the world have been both concerned and distressed by much that has taken place in South Africa. Members in both this body, and in the House of Representatives have considered and passed measures which will, hopefully, persuade the South African Government to forever end the unfair system of apartheid. However, while violence between blacks and whites has been increasing, the world has watched in horror.

I have received a number of letters from constituents in Alabama who have offered opinions and suggestions regarding the problem in South Africa. One such letter, from Dr. William Reid, a professor at Auburn University, offers some very interesting ideas. Mr. President, I would like to read a portion of this letter. He writes:

DEAR SENATOR HEFLIN: I, like many Americans, am distressed over the conflict in South Africa. An idea came to me that I would like to share with you. The main concern of white South Africans is that they will lose everything if they compromise with the black majority. They are afraid of a future that gives blacks power.

White southerners had the same fears in the 1950's and 1960's. Those fears never came true.

My idea: a group of southerners—citizens, preachers, perhaps a few Ph.D's in sociology—could visit South Africa and tell them what happened to us. The transition was peaceful. We are all better off for integration, voting rights, becoming more color blind. Our fears did not come true.

This delegation from the south could tour South Africa, speak to white audiences in churches, at public meetings, through the media. The delegation would not say, "This is what South Africa should do." It would say, "This is what happened to us."

Again, the whites are so afraid of what might happen to their way of life, they refuse to compromise. This will lead to their overthrow with the new government that may not be friendly to the United States. Until and unless those fears are calmed, no peaceful change could occur.

Mr. President, I strongly urge the appropriate committees and concerns to investigate this alternative. I would like to see the formation of such a delegation. Perhaps organizations and businesses which conduct operations in South Africa could take action to implement these suggestions. Like Dr. Reid, I would like to believe that the South African Government and the white ruling minority would be receptive to an approach that would demonstrate the harmony that exists between races in a free, undivided system.

I hope this idea becomes a reality. It is a constructive suggestion which holds much promise, for it provides for the interaction between two cultures which have at some time experienced the problems of prejudice and racism. The people of South Africa could learn from the experience of all those involved in the American civil rights movement. Hopefully, if implemented, this idea could allow South Africa to peacefully and quickly eliminate the unfair system of apartheid.

HUMAN RIGHTS ABUSES IN THE SOVIET UNION

Mr. GRASSLEY. Mr. President, as part of a coordinated initiative undertaken by the International Parliamentary Group for Human Rights in the Soviet Union [IPG], my colleagues and I have offered a number of recommendations to Secretary of State George Shultz for the Vienna Review Conference of the Conference on Security and Cooperation in Europe [CSCE], which opens November 4, 1986.

We offer these recommendations as a means of improving Soviet human rights performance and as a framework for a unified human rights policy among democratic nations. They are based upon proposals which were submitted by 17 democratic nations at the 1985-86 CSCE human rights experts meetings.

The Vienna Review Conference, in accordance with the Helsinki review process, will serve to examine the compliance of the Helsinki Final Act by its 35 signatory states as well as to consider new commitments the signatories may wish to undertake.

IPG is deeply concerned about the continuous displays of human rights abuses in the Soviet Union. Since 1979, Soviet human rights performance has deteriorated in all respects. Emigration of Soviet Jews and ethnic Germans is at an alltime low and the number of trials and imprisonments of religious activists has increased dramatically. Furthermore, the Soviet performance record in the area of free flow of information is abysmal. This was most recently exemplified in the arrest of American news correspondent Nicholas Daniloff.

There is no question that the Vienna Review Conference comes at a critical point in East-West relations. IPG members are convinced that, if these relations are to improve, we must insist upon balanced progress in all areas of the Helsinki Final Act. In other words, any new agreements made in the areas of military, security, and economic relations must be accompanied by similar agreements in the human rights area or at the very least, by the guarantee of performance under already existing agreements.

Mr. President, Soviet human rights performance must remain firmly on the bilateral and multilateral agendas of all democratic nations in their relations with the U.S.S.R.; democratic unity is an indispensable requirement for encouraging Soviet compliance with the Helsinki Final Act. To that end, my colleagues and I have submitted the following recommendations. I ask unanimous consent that they be entered into the RECORD.

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

IPG RECOMMENDATIONS FOR THE VIENNA REVIEW CONFERENCE

I. Basket I, Principle VII—"Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief":

A. The participating States will take necessary action to remove legal and administrative measures so as to ensure in practice the right of all their citizens, individually or in groups, effectively to monitor implementation of these documents, and to express their views on any question concerning implementation.

B. The participating States will pay special attention to the elimination of discrimination against the individual believer wherever this occurs. They will create an atmosphere of tolerance and respect for all matters relating to freedom to profess and practice religion or belief, alone or in community with others, in public or in private.

C. The participating States will engage in consultations with the religious faiths, institutions and organizations, in order to reach a better understanding of the requirements of religious freedom and to take action to ensure their fulfillment. They will act to guarantee, *inter alia*,: the right to give and receive religious education individually, collectively or through religious organizations, including the freedom of parents to transmit their religion or belief to their children; the freedom of the individual believer or communities of believers to establish and maintain contact and hold assemblies in common with fellow believers, including those of other countries; to produce, acquire, receive, import and make full use of publications and other materials concerning the profession and practice of religion or belief, and to use the various media for religious purposes.

D. The participating States will, to the maximum extent possible, respond positively to requests to observe legal proceedings. They will admit observers or provide full explanations as to why observers may not be admitted.

E. The participating States will work toward the reduction in length of incommunicado detention to a minimum.

F. The participating States will improve and increase the opportunities for representatives of non-governmental humanitarian organizations to visit prisoners.

G. The participating States will ensure that individuals are protected from psychiatric practice which violate human rights and fundamental freedoms.

II. Basket III—"Cooperation in Humanitarian and other fields":

A. Cooperation and exchanges in the field of culture:

1. The participating States will remove legal and administrative measures, such as censorship, which constitute barriers to creation and dissemination in different fields of culture.

2. The participating States will remove restrictions on obtaining, possessing, reproducing, publishing and distributing materials related to the different fields of culture, including books, publications, films and videotapes, as well as use of typewriters, word processors and copying machines.

3. The participating States will permit unimpeded reception of broadcasts and place no restrictions on the right of individuals to choose freely their sources of broadcast information and culture.

4. The participating States will abstain from placing undue obstacles to access to direct broadcasting satellites transmitting radio and television programs, including those of a culture nature.

5. The participating States will: protect the unique identity of national minorities and foster the free exercise of cultural rights by persons belonging to them; ensure in practice unhindered opportunities for these persons idependently to maintain and develop their own culture in all its aspects, including religion, cultural monuments, historical artifacts, language, literature; and to ensure unhindered opportunities for them to give and receive, individually or collectively, instruction in their own culture, especially through the parental transmission of language, religion and cultural identity to their children.

B. Human Contacts:

1. The participating States will: deal favorably with applications from their citizens or nationals who are also recognized as citizens or nationals by another state to leave in order to visit that state or settle there; give special attention to requests for exit documents submitted to reunite minors with their parents; facilitate the exit of persons for the purposes of family reunification; simplify the application procedures for family reunification.

2. The participation States will: abolish, for their nationals, the requirements to obtain an exit visa in order to leave their country and issue exit visas for foreigners residing on their territory as expeditiously as possible; publish within one year all laws, regulations and procedures concerning decisions to permit their citizens to leave their country, and to help make the laws in force accessible to all strata of the population; remove legal and other obstacles restricting contacts on their own territory between their citizens and resident or visiting citizens of other states.

3. The participating States will: remove existing impediments which prevent individuals and the institutions and organizations which they have freely established and joined from maintaining contact, communication and organizational ties with similar organizations in other participating states without need of official sponsorship or approval; guarantee the freedom of transit for postal communication, thus ensuring the rapid and unhindered delivery of personal mail; ensure all the conditions necessary to carry on rapid and uninterrupted telephone calls, including the use and development of direct dialing systems wherever it is possible, and respect the privacy and integrity of all such communications.

HERSHEYPARK ARENA

Mr. SPECTER. Mr. President, the Hersheypark Arena in Hershey, PA, will hold its 50th anniversary celebration on October 22, 1986. I wish to call the attention of the Senate to the distinguished history of the arena as this important event draws near.

Actually founded on December 19, 1936, the arena is perhaps best known as the birthplace of the Ice Capades. The Ice Capades, which have since delighted so many millions of Americans, were the brainchild of a group of arena managers who met in Hershey in 1940. Among these managers was John Sollenberger, who was then president of Hershey Estates. In fact, the first performance of the Ice Capades took place in the Hersheypark Arena on Valentine's Day in 1941.

Over the years, many other notable performances have taken place at the arena. It continues to provide entertainment to Pennsylvanians, being used not only for Ice Capades performances but also for hockey games, basketball games, including some by the Harlem Globe Trotters, and other ice shows.

The enjoyment provided to Pennsylvanians and innumerable other Americans by the Hersheypark Arena can hardly be measured. I offer my congratulations to all those involved in the continuing success of the arena, both now and over the last five decades, and join all of them in looking forward to the next 50 years of the arena's service to the public.

THE PERILS OF ECONOMIC SANCTIONS

Mr. PRESSLER. Mr. President, I ask unanimous consent that the following articles on South Africa sanctions be inserted in the RECORD. The article, by Professors Phillip D. Grub and Rodney Eldridge of George Washington University and Anne Perry of American University, is entitled "Sanctions, Divestment and Divestiture: Treacherous Weapons," and I commend it to my colleagues.

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

SANCTIONS, DIVESTMENT AND DIVESTITURE, TREACHEROUS WEAPONS

(By Phillip D. Grub, Aryamehr Professor of Multinational Management, George Washington University; Anne Perry, Assistant Professor of International Business, American University; Rodney Eldridge, Professor of International Finance, George Washington University)

INTRODUCTION

Once again the American Congress is resorting to sanctions that many in that august body know will not achieve their intended goal. Others, well intended, follow blindly like sheep over a cliff because they know little about international trade and investment and much less about international economic and political impacts of their actions. The result will be much like it has been in the past, when sanctions have been applied by the U.S., non-achievement of the intended objective and a disasterous impact on U.S. international competitiveness. Furthermore, congressional sanctions legislation will negate efforts made by U.S. multinationals to raise standards for their black employees and blacks in general in South Africa as well as calling a halt to virtually all U.S. trade and economic relations between the two nations.

The list of politically motivated economic sanctions that can be applied to a country considered to be engaging in some form of "deviant" behavior that must be corrected is as long as its history. Sanctions range from simple tariffs to outright embargoes. They are not limited to trade, but extend to foreign direct investment, and more subtle measures such as the denial of patent rights. Whatever form sanctions may take, their ultimate goal is always the modification of the behavior of the target country. Not only are sanctions rarely successful but they often have unintended consequences and can, in fact, inflict greater damage to innocent parties than to the target government. Nevertheless, for political reasons, countries feel they must resort to sanctions regardless of the outcome and ultimate cost. Since the controversy surrounding sanctions against the South African government is escalating at home and abroad, it is timely to re-examine the issues which cannot be disassociated from economic sanctions.

THE EFECTIVENESS OF SANCTIONS

Each case in which sanctions have been applied is unique since the issues, as well as the character, political context, and economic circumstances of the countries involved are very diverse. But it stands to reason that the effectiveness of sanctions is a function of (1) the means of resistance available to the target country, (2) the support given the sanctions by third parties, (3) the extent to which enforcement is possible, (4) resources available to the target country, (5) what the stakes are for the sanctioned party. Historically, in the long-term, countries to be punished by sanctions have been able to manipulate the above variables to their advantage. Faced with what they perceive to be an infringement of their sovereignty, they generally succeed in ultimately defeating economic sanctions, even when the latter have met with initial short-term success. Cuba's alternative to the U.S. trade embargo was and has remained the Soviet Union. The Soviets, when denied access to U.S. grain for their invasion of Afghanistan, simply took their business elsewhere—to the Argentinian farmer. The result of the two U.S. sanction efforts has been a strengthened Soviet position in the western hemisphere. Clearly, this was not the intended result of these sanction activities.

Economic sanctions are equivalent to an act of war, employing lesser means—economic rather than military—since their aim is to compel the target government to alter its actions and policies. The U.S. being in a permanent state of conflict with the Soviet Union is eager to impose on its various types of economic sanctions designed to lessen Soviet economic capabilities. However, as is obvious in the failure of the U.S. government to stop the construction of the Russian-European pipeline, economic sanctions are meaningless without the support of third parties. The U.S. failed because it was not able to extend its policy of extraterritoriality. European governments, concerned with unemployment, refused the U.S. the right to forbid the European subsidiaries of its multinationals to sell parts and equipment to be used in the construction of the pipeline.

Governments do foil each others plans. The embargo against the white government of Rhodesia was bound to fail since the government of South Africa came to its rescue. Besides, governments will limit the effectiveness of their own sanctions or their allies' by cheating. Individuals, in pursuit of their own personal profits rather than governments' ideologies, participate in limiting the effect of sanctions. Dummy corporations can be set up, goods can be shipped to forbidden destinations through legitimate intermediary points, or simply smuggled into the country. Failure to prevent equipment—"not-for-sale to the Russians"—from reaching the Soviet Union is an ongoing concern of the U.S. government.

The strongest, yet most misunderstood stumbling block to a successful outcome of economic sanctions is of a cultural and ideological nature. The U.S. applies to other countries its own cultural bias. It assumes that economic hardship is intolerable, therefore, should produce desired results. It fails to understand that economic hardship may be a preferable alternative to placing at risk a ruling party's power or its basic political values.

Totalitarian regimes lacking in legitimacy, but drawing their strength from a party that cannot be wrong, need to be seen by their own political constituency as unbending. Their resolve is all the stronger because the political system does not allow for political opposition that could bring pressures to ease sanctions. It should come as no surprise that seven years after the U.S. grain embargo was imposed, the Soviets are still in Afghanistan, and the embargo has since been lifted to satisfy domestic U.S. political/economic concerns. Intimidation in the form of revocation of the "most favored nation" trade status under the Jackson-Vanik amendment has not brought about any desirable results when this sanction was imposed. It has not led to an increase in emigration out of the Soviet Union—in fact,

just the reverse. Similar sanctions have not resulted in an early suspension of martial law in Poland. In the case of Poland, sanctions did increase its economic dependence on the Soviet Union, a result which certainly was not a goal of its authors.

THE CASE OF SOUTH AFRICA

Similarly, the government of South Africa feels threatened by both internal and external forces. Its legitimacy and sovereignty is being challenged. In that respect it perceives itself to be in a similar predicament as the Soviet Union, despite vast differences in the form of governments. Therefore, it may well be equally prepared to offer determined resistance. It would be well to remember that when the U.S. tried to stop the Japanese from pursuing their expansionary policy in Asia by using trade sanctions, it succeeded mostly in reinforcing the determination of Japanese radicals to proceed to ultimate action—eventually the bombing of Pearl Harbor. The South African Nationalist party has considerable resources with which to resist sanctions. It has already pointed out that it has not yet begun using the means available to its cause. For its size, much like Israel, South Africa is a powerful military country with a well developed economy. Should mobs get out of hand, the government could restore order by using its military forces against resistance instead of using civilian police. In case of serious economic hardship, the government could refuse to provide for the black population, keeping its scarce resources for the benefits of whites only.

In any case, the possibility of a lower standard of living brought about by economic sanctions would hardly frighten into submission the descendants of the Boers who fiercely resisted the British nearly a century ago. With no less than the preservation of their heritage at stake, it would seem a small price to pay. Besides, Pretoria would always find new suppliers anxious to make a sale and take over where former suppliers left off. The support U.S. sanctions against South Africa would actually receive remains to be seen. Europe, mindful of its own interests, and less inclined to link economics to politics, favors milder sanctions. The Japanese are also putting together their sanction package, but how committed are they to the resolution of Western disputes and civil right issues? How long would their ubiquitous trading companies pass up new trading opportunities? And would European and other Asian countries turn their back on this golden opportunity, particularly in view of the downturn in Middle East business activity? In short, economic sanctions appear unlikely to succeed in bending the will of the South African government.

THE COST OF SANCTIONS

Sanctions have a way of yielding unexpected and unwanted results as has been indicated. They can benefit those they intend to harm while harming those they were meant to help. When the British, by means of the Continental Blockade, cut France off from its sugar suppliers, France developed its own sugar-beet industry. The 1973 OPEC oil embargo led to energy conservation, stepped up research for alternate sources of energy, and encouraged the exploitation of North-Sea oil, as well as Mexican and West African. President John F. Kennedy placed an embargo on arms which resulted in South Africa building up an armament industry that exports weapons throughout the world. Consequently, if we embargo computer technology, as some advocate, South Africa will merely hire German, Israeli or Japanese engineers to fill the gap and a new competitor will be in the market place.

Foreign Minister Botha was quick to point out that U.S. interference in South African internal affairs is not in the best interest of the U.S. If sanctions are to be a tool of foreign policy, it stands to reason that U.S. interests should first be served. Those who oppose strong sanctions on these grounds argue that the U.S. cannot afford to sacrifice an ally which is vital not only to the interests of the U.S. but of the free world. South Africa is strategically located in the Southern half of a continent where there are no strong pro-Western governments left. As such, it has remained the only hope of those fighting Cubans in Angola. Presently, Western vessels ply friendly waters as they pass the Cape of Good Hope. Should the area fall into hostile hands and port facilities in this remote region were restricted, international trade would suffer.

Access to the mineral wealth of South Africa is a serious concern of the U.S. The U.S. relies on South Africa for strategic raw materials that are critical to its high technology and defense industries. Deprived of its Western supplier, would the U.S. have to turn to South Africa's major competitor—the Soviet Union, or would it be forced into developing much costlier alternatives? Many feel that the major argument against punitive sanctions for South Africa comes from the benefits the Soviet Union stands to reap. An economically weakened South Africa would surely be a major target for the Soviet Union as it seeks to extend its influence in this strategically located mineral-rich part of the world. If the Soviets were to succeed in this expansion, they would achieve a virtual monopoly in the world's supply of key stragetic materials.

But most tragic of all is the realization that the burden of economic sanctions would fall on those they were designed to protect, automatically causing losses of jobs for the black population. Ironically, it is the same U.S. multinationals that brought improved employment opportunities to blacks which are being targeted for divestment.

DIVESTMENT AND DIVESTITURE

There has been a strong campaign—both within and beyond the legislative context—to persuade U.S. companies to divest themselves of their South African business ventures and refuse to invest even a cent further in that country until the government has abandoned its apartheid policy. Furthermore, there has been pressure placed upon institutions, particularly universities and public employee pension funds, to divest themselves in any stock in companies that have investments in or are doing business with South Africa. Both divestiture and disinvestment are ineffective strategies. You never win a fight by running away from it; on the contrary, you have to be in there pitching to win the game.

What kind of a job are the American firms doing in Africa to improve the status of blacks? Of those companies operating there, the American firms are doing the most. Not only do black employees make up a significant number of their work forces, companies have also invested in education as a means to improve their skills and abilities which will provide for upward mobility. Such actions include language classes to build and improve their command of English; evening classes for workers; special educational grants for the children of workers to obtain schooling; financial support for technical training centers; scholarships for blacks to attend universities; contributions to libraries; company guarantees for housing loans for employees; improved community health care facilities; and contributions to recreation centers. There are in addition to in-house company training programs at all levels. In looking at European and Japanese investment, few, if any, of these fringe benefits exist.

Assuming that all American companies that have a financial interest in South Africa pulled out their investment, and all other American firms doing business with the public or private sectors would suddenly cease that activity, what would be the outcome? Would this pressure the government in such a fashion as to suddenly drop all biases? No! What would happen would be the following: Investment from countries including Israel, Germany, France, and Japan, and perhaps South Korea and Taiwan, would quickly fill the gap left by a U.S. departure. In the case of those who are trading with South Africa, alternative sources would soon be found. In fact, other countries would rejoice as their balance of payments were enhanced.

Finally, let us cite a real example of divestment. Pan American eliminated its New York to Johannesburg airline service last year. The result was that when South African Airlines announced its profits for 1985, they had made more money than ever before, and particularly because of the absence of competition from Pan American. Furthermore, it puts control of an industry fully in the hands of the white government supporters.

Caterpillar Tractor is one of the major investors in South Africa. Were it to pull out, it certainly could not take the plant and equipment with it. Nor would they destroy their plants to render them useless. On the contrary, they would probably have to sell their assets at fire-sale prices to a company like Komatsu, Caterpillar's primary world wide competitor—and the Japanese have a record of not interfering in domestic affairs where their affiliates are located.

There are other impacts of divestment as well. If all (or most) American firms pull out, the price for their investments in South Africa will drop because the buyers will know that the American companies have no choice but to sell. In short, the result will not be to enhance the status of blacks in South Africa, but rather cause worker displacement, loss of jobs, and less opportunity for workers. It will also hinder the social progess that has been made by U.S. companies, create losses on U.S investments, and lose an important market share to foreign competitors, thereby worsening the overall U.S. balance of payments.

Approximately the same situation occurs if institutions, such as universities following the lead of the California system are required to divest stock of companies that have investments in or are doing business with South Africa. Were this to happen all at once, the price of the stock would be depressed allowing other investors, Japanese and probably European pension funds and others with large sums of disposable cash, to buy up these stocks at a greatly reduced price. On the other hand, universities and other investors that have divested would then find that other stocks they seek to buy were grossly inflated by the resultant demand for "South African free" assets; yet they must invest if they are going to earn an income to support their institutions.

Although American firms, investors, and the nation's balance of payments would be hindered, were the U.S. to withdraw completely from the South African market place, the greatest losers would indeed be the blacks that proponents of sanctions, divestiture and divestment are supposedly seeking to help.

Further, potential consequences on neighboring countries cannot be overlooked. Migrant workers from economically depressed neighboring states will be sent home after their loss of employment in South Africa. Black nations will be paying for their support of punitive sanctions against Pretoria. Retaliatory countersanctions that have already been outlined by the South African government can bring about the total collapse of already fragile economies. Countries such as Mozambique, which may be in the process of rethinking their adherence to the Soviet economic model, would likely be driven back into the arms of their community trading partner.

MORAL AMBIGUITIES

Clearly the challenge should be to bring about an end of apartheid—not to destroy the economies of half a continent, nor to turn it over to the Soviet Union. Why then such disregard for compelling arguments against punitive sanctions? The answer is simple. At the heart of the controversy stands the explosive issue of political equality and civil rights. Even the strongest proponents of moderation recognize that in spite of its ineffectiveness and potential deleterious effects, the use of sanctions as an expression of this country's commitment to human rights must be contemplated. The cause of human rights is so morally weighted, and believed by Americans to have a universal application that they feel compelled to assert it. At least that is the theory, which it should be noted, can be opportunistic in its applications and differentiated between various human rights causes. Some are obviously more "noble" than others, in part because they carry greater payoffs in domestic politics. Civil rights for blacks is one of them, but the oppression of minorities in the Soviet empire, except for members of the Jewish faith and a few known dissidents, arouses little emotion.

This double-standard moral approach to punitive sanctions is further weakened by the claim made by the U.S. that it is in fact acting out of self-interest. It is seeking to position itself favorably for the future when black leaders have taken over. This opportunistic policy of non-alienation becomes valid—if not moral—only if the winning team has been correctly identified in advance, and provided the government South Africa has not swung so far to the left that it has cut off all ties with the West.

Moral rhetoric loses further appeal when it becomes evident that indeed self-interest has not been forgotten. The U.S. sanctions allow for "selected" loopholes. Minerals of greatest strategic importance to U.S. interests have conveniently been excluded from the latest absolute bans on U.S. imports. Prime Minister Thatcher, whose country needs agricultural products shows great reluctance in cutting agricultural imports, fearing the loss of black jobs. On the other hand, she has steadily refused to consider divestment which would directly and substantially affect British interests in South Africa. Curiously enough, according to her logic, the loss of higher paid manufacturing jobs by blacks is less important than the loss of lesser paid, dead-end agricultural jobs, because Britain has heavy unemployment in the manufacturing sector and this is popular politically.

CONCLUSION

While no self-respecting human being or government could ever condone apartheid, punitive economic sanctions are the wrong approach to dismantling apartheid. Sanctions, historically have at best been ineffective, and at worse catastrophic. While we cannot be blind to the suffering entailed by South African Blacks, valid moral arguments and self-righteous postures are fraught with emotional rhetoric, double standards, and opportunism. No one will deny that much remains to be done in South Africa, but progress has been achieved. It must not be allowed to lose momentum. It must be encouraged and promoted. This is why it is imperative that channels of communication and influence be kept open. We should use our economic leverage to press for a rational solution and not emotionally rush into punitive sanctions harmful to a strategic ally and to those we wish to help. We should support a summit meeting between South Africa and world leaders and participate in the drafting of a realistic plan to end apartheid.

In our arrogance to demand a quick solution to a complex problem from another sovereign nation, we seem to have forgotten that not so long ago our own country was torn apart by segregation. We have come a long way, but it took time. South Africa is on a different time table. Let us work together to improve the political and economic situation for the South African Black population and not destroy their future merely to "sop" the collective conscience of the American people.

HANK JAMESON: JOURNALIST, KANSAN AND FRIEND

Mr. DOLE. Mr. President, I was saddened to hear of the passing late Wednesday of Henry B. Jameson, longtime editor of the Abilene Reflector-Chronicle. He was one of the real stars in the "galaxy of Kansas journalists" that has brought national respect, and recognition, to my home state newspapers.

Hank was the essence of Kansas: warm and friendly; fiercely independent; and loaded with common sense. If you wanted to feel the "pulse of the plains"—to know the will of the people—you had only to call Hank. He only needed a few choice words to tell you exactly what was happening back home. And if you did not get the message, you would get it from one of his crack editorials

EYEWITNESS TO HISTORY

Mr. President, my friend from Abilene was in the middle of a lot of history; and always, his pen and typewriter brought those events alive for his readers in every corner of the world, from Asia to Abilene. Hank was a World War II correspondent who put his life on the line at Normandy to report the drama of D-day for the Associated Press. Although he was wounded during the invasion, he continued sending dispatches back to his ship off the embattled Normandy coast.

THE EISENHOWER STORY—UP CLOSE AND PERSONAL

Thanks to Abilene, Hank Jameson enjoyed an "up-close and personal" view of one of the great chapters in American history: the life and times of Dwight David Eisenhower. From Ike's humble family home in town, to the bloody battlefields of Europe, and all the way to the White House, Hank was an "eyewitness to the Eisenhower legend." When the world came to Abilene—as it often did during the Eisenhower years—more than a few high-powered officials, and heads of state, touched base with Hank Jameson. He earned their respect, and they cherished his wisdom. And believe me, the "Kansan in the Oval Office" never lost touch with Hank, either.

FAREWELL TO A FRIEND

But as much as our friends was tied to the Eisenhower saga, Hank was much more than just a "spectator to history." He was an involved and thoroughly active editor and publisher, who made his newspaper an important voice from the heartlands. He loved his community; worked everyday to improve it, and lived his life to the end in Abilene.

Mr. President, I am proud to call Hank Jameson my friend. The Senator from Kansas, and the Sunflower State, will miss this good man. Our prayers and thoughts go out to the Jameson family.

I ask unanimous consent that two articles relating to the death of Hank Jameson be printed in the RECORD.

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

[From the Kansas Associated Press, Oct. 2, 1986]

KANSAS NEWSPAPER EDITOR, PUBLISHER DIES

ABILENE, KAN.—Henry B. Jameson, editor and publisher of the Abilene Reflector-Chronicle and a war correspondent for The Associated Press during World War II, died late Wednesday night of a heart attack. He was 73.

Mr. Jameson had served as editor and publisher of the central Kansas daily since 1955 after 12 years with the wire service. He was the second editor and publisher in the paper's history, following Charles M. Harger.

Active in the Republican Party, Mr. Jameson was a long-time personal friend of President. Dwight D. Eisenhower, whose boyhood home was in Abilene, and helped launch the "draft Ike" movement in 1951.

He was the author of several books, including "They still Call Him Ike."

Mr. Jameson also was considered the first American correspondent to be wounded in the D-Day invasion of Europe in 1944.

In an anniversary piece serveral years ago about the June 6 invasion, Mr. Jameson, who was hit by German artillery, wrote: "I have revisited the bloody Omaha Beach area of Normandy several times, never without choking up, shedding a tear and kneeling at the grave of one of my fallen co-workers. I left a little of my own flesh and blood

there, too, on the D-Day invasion of Europe in World War II."

He noted later that his first eyewitness story from the beach-head was dictated to another correspondent named Ernie Pyle, stationed offshore.

In a telephone interview from Santa Barbara, Calif., Wes Gallagher, a former AP president and the news service's chief European war correspondent, recalled Mr. Jameson as "a pretty good poker player," and a man who remained affable in the face of adversity.

Mr. Jameson also worked for the AP in Kansas City in 1935 before being assigned to St. Louis, Chicago and New York.

He was active in the Republican Party, serving as a member of the state committee and as a delegate to the 1964 National Convention. He was selected to be a presidential elector on two occasions.

Mr. Jameson was a past president of the Kansas Chamber of Commerce, the state Historical Society, the Kansas Press Association, the Kansas Tourist Council and the Abilene Chamber of Commerce. He had served as a member of the Kansas City Rights Commission.

"Henry was certainly one of the most respected editors in the state and a very personable fellow," said Murrel Bland, president of the Kansas Press Association and publisher of the Wyandotte West newspaper.

"Henry always had time for his community. He didn't believe in just writing editorials. He believed in, being a man of action. He'd go out and be a participant, too. He practiced what he preached."

Survivors include his wife, Bernice, and a son, Henry B. Jameson, Jr., of Dallas.

Funeral services were scheduled for 11 a.m. Saturday at the First Presbyterian Church in Abilene.

[From the Russell Daily News, Oct. 2, 1986]

HENRY JAMESON

Henry B. Jameson, Abilene newsman, died Wednesday at the age of 73. The victim of a heart attack is one of the members of the trade we've felt earned the title of newsman.

A life-long reporter, correspondent and publisher, Hank Jameson was one of the best in Kansas' recent years—and that's traveling in mighty fast company.

Hank Jameson is best known among contemporaries as the man who helped make Abilene what it is today, who ran a good newspaper, became a leader in his profession by setting an example—instead of being one.

We imagine Jameson would prefer to be known for his days in the ETO of WWII as a war correspondent. He worked near the desks of many who returned to set policy in the years following. He rubbed shoulders with the top echelon of high commands and had a front row seat in the biggest adventure a Kansas youth could imagine.

However, in Kansas, Hank Jameson is better known as the man who brought Dwight D. Eisenhower "home." When the general made the move to run for the presidency, he did it at home—in Abilene. When policy was being made, it was often cleared through Abilene. When a Presidential Library was planned it was planned in Abilene.

Ike and Mamie are buried in Abilene.

The telephone in Hank Jameson's office probably carried more conversations from top brass of Eisenhower's and following administrations than any other telephone in Kansas. Yet that office in the Reflector-Chronicle was always open.

Jameson believed in himself, his family, his country and his world. He had a knack of turning a good story and writing columns and editorials Kansas style. He used humor judiciously and often. Shooting down trial balloons, deflating pomposity and finding the practical and good when things seem darkest were strengths.

The Kansas Press lost a leader in Hank Jameson. There are few waiting in the wings these days to follow his act.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON MINE SAFETY AND HEALTH ACTIVITIES—MESSAGE FROM THE PRESIDENT—PM 179

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with Section 511(a) of the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 958(a)), I transmit herewith the annual report for Fiscal Year 1985 on mine safety and health activities as submitted by the Secretary of Labor.

RONALD REAGAN.

THE WHITE HOUSE, *October 3, 1986.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that on October 2, 1986, he had approved and signed the following enrolled bills and joint resolutions:

S. 2703. An act to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers.

S. 2759. An act relating to telephone services for Senators.

S.J. Res. 207. Joint resolution to designate November 15, 1986, as "National Philanthropy Day".

S.J. Res. 263. Joint resolution to designate September 1986 as "National Independent Retail Grocer Month."

S.J. Res. 402. Joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship".

MEASURES PLACED ON THE CALENDAR

The Committee on Energy and Natural Resources was discharged from the further consideration of the following bill, which was placed on the calendar:

H.R. 4162. An act to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent pending further disposition:

H.R. 5353. An act to provide for a land exchange in the State of Alaska.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DURENBERGER, from the Select Committee on Intelligence:

Special Report entitled "Meeting the Espionage Challenge:

A Review of United States Counterintelligence and Security Programs" (Rept. No. 99-522).

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

H.R. 2436. A bill to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutritional quality of the United States food supply, with provision for the conduct of scientific research and development in support of such program and plan (Rept. No. 99-521).

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

S. 334. A bill for the relief of Bobby Lochan (Rept. No. 99-523).

S. 521. A bill for the relief of Suzy Huf Hui Chang and Lee Lo Lin and Lee Juo Jui (Rept. No. 99-524).

S. 1076. A bill for the relief of Denise Glenn (Rept. No. 99-525).

S. 1212. A bill for the relief of Olga Sellares Barney and her children Christian Sellares Barney, Kevin Sellares Barney, and Charles Sellares Barney (Rept. No. 99-526).

H.R. 5016. A bill for the relief of Sueng Ho Jang and Sueng Il Jang (Rept. No. 99-527).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with amendments:

S. 1452. A bill to settle Indian land claims in the town of Gay Head, MA, and for other purposes (Rept. No. 99-528).

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

H.R. 1598. A bill for the relief of Steven McKenna.

H.R. 4745. A bill to amend title 18, United States Code, with respect to sexual abuse.

S. 1534. A bill for the relief of Masoyoshi Goda, his wife Nobuko Goda, and their children Maki Goda and Eri Goda.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

James L. Malone, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States to Belize (Exec. Rept. 99-26):

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: James L. Malone.

Post: Ambassador to Belize.

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses names: James Lauren Knight, none; Adrienne Elizabeth, none; Frank L., none.

4. Parents names: R.K. Malone (father, deceased 1977), none. Byrdena L. Malone (mother, deceased 1981), none.

5. Grandparents names, (all deceased since 1955), none.

6. Brothers and spouses names, none.

7. Sisters and spouses names, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PROXMIRE:

S. 2906. A bill to amend title 10, United States Code, to increase the combat support assignments open to women in the Armed Forces; to the Committee on Armed Services.

By Mr. METZENBAUM:

S 2907. A bill to amend chapter 96 of title 18, United States Code; to the Committee on the Judiciary.

By Mr. SYMMS:

S. 2908. A bill to amend section 2254 of title 28, United States Code; to provide specific procedures for the consideration of writs of habeas corpus filed on behalf of individuals under a sentence of death; to the Committee on the Judiciary.

By Mr. D'AMATO:

S. 2909. A bill to provide for adherence with the MacBride Principles by United States persons doing business in Northern Ireland; to the Committee on Finance.

By Mr. KERRY:

S.J. Res. 423. A joint resolution to designate the week beginning January 19, 1987 as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays' Rebellion Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 2906. A bill to amend title 10, United States Code, to increase the combat support assignments open to women in the Armed Forces; to the Committee on Armed Services.

(The statement of Mr. PROXMIRE and the text of the legislation is printed earlier in today's RECORD.)

By Mr. METZENBAUM:

S. 2907. A bill to amend chapter 96 of title 18, United States Code; to the Committee on the Judiciary.

REFORM OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

● Mr. METZENBAUM. Mr. President, today I am introducing legislation to reform the Racketeer Influenced and Corrupt Organizations Act, more commonly known as "RICO."

This law was enacted in 1970. Its purpose was to give a tool to the Government and to private citizens to fight organized crime and related efforts to injure and defraud persons through a pattern of ciminal activity. Congress enacted strong remedies for actions under RICO, including the right to treble damages and attorneys fees for successful plaintiffs.

There has been much controversy about this legislation. Frankly, some of the actions brought under RICO do not challenge egregious criminal conduct, but are in substance lawsuits over ordinary commercial disputes. Because of the generous remedies available under RICO, however, these disputes are brought under the act. On the other hand, RICO has also been a powerful tool to attack harmful illicit activity.

Some want to retain this act in close to its current form. They feel strongly that it should not be changed in any significant way. Others particularly those in the business community, feel that the law should be cut back drastically. In particular, proposals have been made to require proof of a criminal conviction before any private RICO action can be brought. The Justice Department, which testified on more than one occasion against such an approach, has now switched its position, and supports it.

The proposal to require proof of a criminal conviction before a RICO action is initiated would foreclose RICO cases in many instances where there has been extensive, harmful criminal conduct. Too many crimes in this country are simply never prosecuted because of the limited resources of our law enforcement officials. For this reason, I am convinced that this approach goes too far.

The legislation I am offering takes a sensible middle ground. It preserves RICO as a strong tool for fighting organized crime. It retains strong remedies for harm to individual consumers. And it reduces the incentives to use RICO for ordinary commercial disputes. In order to accomplish this objective, the bill divides RICO cases into three basic categories, each with different remedies.

First, in the case where the defendant has been convicted of criminal offenses, the current provisions for treble damages and attorneys fees to successful plaintiffs is retained. There is also no change in the case of civil or criminal actions by the Government.

Second, in the case where individual consumers have been harmed in the purchase or lease of a product, service or investment, including the purchase of real property and credit, for their own use, the remedy would be actual damages, attorney's fees, and discretionary damages up to twice the level of actual damages, depending on the seriousness of the conduct. This approach means that in the case of the most egregious conduct by a defendant, treble damages could still be awarded. However, in the case where the conduct is less egregious, punitive damages would be much less.

Finally, for cases in which commercial entities have been harmed, the remedy would only be actual damages plus attorney's fees. This last category of cases would include commercial disputes which now make up the great majority of RICO legislation. By reducing the remedy to actual damages, the incentive to use RICO would be greatly reduced.

I have engaged in extensive discussions over the past several weeks with various Members of the Senate and House and other interested parties in an effort to reach an acceptable compromise based on this approach. As a result of these discussions, I have modified my initial proposal in a number of respects to address legitimate concerns and questions. A number of provisions were adopted in a spirit of compromise in order to bring all sides closer to consensus. The product of these discussions is reflected in the bill I am introducing today.

I particularly appreciate the cooperation of Senator LEAHY, Congressman RODINO, chairman of the House Judiciary Committee, Congressman CONYERS, chairman of the House Judiciary Subcommittee with responsibility for this matter, Congressman BOUCHER who introduced legislation on this subject, and others who cooperated in these discussions. I understand that Chairman RODINO supports this basic proposal with minor modifications, and that the House of Representatives may act favorably on it very soon.

Although the time remaining for congressional action during the 99th Congress is limited, I am hopeful that there will be an opportunity for Con-

gress to enact this proposal before adjournment.●

By Mr. SYMMS:

S. 2908. A bill to amend section 2254 of title 28, United States Code, to provide specific procedures for the consideration of writs of habeas corpus filed on behalf of individuals under a sentence of death; to the Committee on the Judiciary.

PROCEDURES FOR CONSIDERATION OF WRITS OF HABEAS CORPUS FILED ON BEHALF OF INDIVIDUALS UNDER A SENTENCE OF DEATH

● Mr. SYMMS. Mr. President, today I have introduced legislation to expedite the review of death penalty appeals in Federal courts pursuant to a judgment of a State court.

Recently, I received a letter from Jim Jones, the attorney general for the State of Idaho, in which he indicated his disillusionment with the judicial system's handling of death penalty appeals.

Although I believe our judicial system is one of the best in the world, I understand the States problems in processing death penalties. Our laws allow every possible avenue to be explored in efforts to establish a person's innocence and ensure justice. However, these laws—particularly the writ of habeas corpus—are often abused and exploited by convicts who want to buy time rather than prove their innocence. In capital cases, Mr. President, the name of the game has become delay.

While we all agree with the Supreme Court that the writ of habeas corpus is important in assuring that consitutional rights are observed, I also agree that Federal courts are not forums to relitigate State trials, nor a means of postponing executions indefinitely.

In the attorney general's letter, he refers to a case that has persisted in Idaho for quite some time. Thomas Creech, who has been convicted of murder and sentenced to death, has received two stays of execution during the past several months. He has yet to establish substantial evidence to justify these stays, but because of the numerous transcripts that have accumulated over the years, it takes the court months to review the case in its entirety before a judgment can be made on the appeal. The court is thus forced to grant stays based on the amount of time it takes to review habeas corpus applications, rather than on any new evidence of innocence.

Mr. President, permit me to relate an egregious miscarriage of justice. In Seminole County, GA, several men broke into a mobile home, and during the process of robbery, they killed an entire family execution style. Moreover, the assailants learned that the mother of this family was expected back later in the evening. They waited for her return, and when she returned, took turns, raping her. Following these heinous acts, they took her into the outlying woods where they again raped her, and later killed her in the same manner they had the others. These murderers were caught, tried, convicted of murder, and sentenced to death. The trial proved overwhelmingly their guilt based on a variety of sources such as the defendant's fingerprints found in the home, an eye witness, and one other defendant turning State's evidence. Mr. President, all of this transpired in 1973 and 1974. In 1986, the convicted killers are still appealing their sentence on the basis that they did not receive a fair trial because of pretrial publicity. This is a ridiculous and cynical abuse of our legal system and rights of due process.

Mr. President, I am deeply concerned that Americans may lose faith in our judicial system. Time and time again, scheduled death sentences have been postponed because a convict has again won another stay of execution based on frivolous and irrelevant grounds. The public will no longer stand for such abuses, and Congress cannot and should not ignore the habeas corpus reform issue any longer. Today, we can take the first step in reforming our judicial system with regard to habeas corpus applications. And in that same step, we could return credibility to our legal system—credibility which it has unfortunately lost.

The bill I have introduced States that an application for a writ of habeas corpus on behalf of a person held in custody under the sentence of death, pursuant to a judgment of a State court, shall not be considered by any Federal court unless the applicant makes a credible showing of innocence by affidavit or other instrument taken upon oath or affirmation. An affirmation of innocence shall be deemed credible if:

Recanted testimony, confession or admission of another, or an alibi is supported by substantial evidence of its truthfulness; or it is shown that material evidence on which the applicant's conviction was based, was clearly false; or there exists competent, admissible evidence of the applicant's innocence that was not presented at the time of the applicant's trial.

Moreover, the limitations of a Federal review of a State conviction resulting in death sentences shall not apply if:

The State does not provide by law for a right to appeal convictions resulting in death sentences and appellate review of death sentences; or

The State provides a right to appeal capital convictions and appellate review of death sentences, but does not provide a procedure for collateral review of State proceedings resulting in sentences of death.

Also, Mr. President, nothing under this provision shall authorize a Federal court to review claims that have been procedurally forfeited in State courts.

This bill would grant an applicant a 60-day stay of execution for the purpose of showing any of the stated requirements, and allows an additional 60 days if there is reason to believe that a credible showing of innocence can be made in the extra time allotted.

I believe this is an important legislative proposal which would relieve the courts and the taxpayers of the substantial costs of litigation, the vast amounts of time spent in reviewing cases, and at the same time, strengthen the right of due process.

Mr. President, I again stress the fact that the American public has grown weary of condemned persons being granted stays of execution based on material that has no substantial merit to the conviction. In Lambert versus Barrett, the Supreme Court held that:

It is natural that counsel for the condemned in a capital case should lay hold of every ground which, in their judgment, might tend to the advantage of their client, but the administration of justice ought not to be interfered with on mere pretext.

In July 1983, the Supreme Court held that the proposal introduced in this bill is compatible with the Constitution. In Barefoot versus Estelle, the Court stated:

A court of appeals may adopt expedited procedures for resolving the merits of habeas corpus appeals, not withstanding the issuance of a certificate of probable cause, but local rules should be promulgated stating the manner in which such cases will be handled and informing counsel that the merits of the appeal may be decided on the motion for a stay. Where there are second or successive federal habeas corpus petitions, it is proper for the district court to expedite consideration of the petitions, even where it cannot be concluded that the petition should be dismissed under 28 U.S.C. sec. 2254 Rule 9(b) because it fails to allege new or different grounds for relief.

Mr. President, I urge my colleagues to review this legislation, and I encourage their support.●

By Mr. D'AMATO:

S. 2909. A bill to provide for adherence with the McBride principles by U.S. persons doing business in Northern Ireland; to the Committee on Finance.

NORTHERN IRELAND FAIR EMPLOYMENT PRACTICES ACT

Mr. D'AMATO. Mr. President, I rise today to introduce legislation to help correct a discriminatory injustice in another part of the world, Northern Ireland. Enactment of this legislation, entitled the "Northern Ireland Fair Employment Practices Act," will deter efforts to use the workplace as an arena of discrimination in Northern Ireland. Similar legislation has been offered in the House.

Yesterday, the Senate handed the President a rare foreign policy defeat by overriding his veto on legislation

applying additional sanctions on South Africa. Congress overwhelmingly decided to follow rhetoric with action by applying economic sanctions against a government that maintains a policy of rampant discrimination.

We have the same opportunity to fight discrimination in Northern Ireland. The Northern Ireland Fair Employment Practices Act incorporates the McBride principles, which are moodeled after the famous Sullivan principles, the incipient effort to apply United States pressure to change the system of apartheid in South Africa. The McBride principles are named in honor of Sean McBride, winner of the Nobel Peace Prize and cofounder of the Amnesty International.

This legislation does not call for disinvestment. It does, however, enlist the cooperation of United States companies active in Northern Ireland in the campaign to force the end of discrimination in the workplace. Specifically, this bill would incorporate the following principles:

First, eliminating religious discrimination in managerial, supervisory, administrative, clerical, and technical jobs and significantly increasing the representation in such jobs of individuals from underrepresented religious groups;

Second, providing adequate security for the protection of minority employees at the workplace;

Third, banning provocative sectarian and political emblems from the workplace;

Fourth, publicly advertising all job openings and undertaking special recruitment efforts to attract applicants from underrepresented religious groups and establishing procedures to identify and recruit minority individual with potential for further advancement, including managerial programs;

Fifth, establishing layoff, recall, and terminations procedures which do not favor particular religious groupings;

Sixth, abolishing job reservations, apprenticeship restriction, and differential employment criteria which discriminate on the basis of religious or ethnic origin;

Seventh, developing and expanding upon existing training and educational programs that will prepare substantial numbers of minority employees for managerial, supervisory, administrative, clerical, and technical jobs; and

Eighth, appointing a senior management staff member to oversee the U.S. company's compliance with the principles described above.

One of the most prominent and painful acts of discrimination is through employment. It is, however, one of the best ways to erase this awful legacy. The workplaces of Northern Ireland are particulary effective arenas to either foster or eliminate discrimination. The unemployment rate for the area is hovering around 20 percent, 50 percent in predominately Catholic neighborhoods. Improving the employment opportunities for those discriminated against will help factor out economic reasons for the current strife in Northern Ireland and, hopefully, will begin the process toward a peaceful resolution to the problems there.

The United States is Northern Ireland's largest single investor. There are over 20 United States companies operating in Northern Ireland, only 5 of which are in Catholic sections. Most of these United States companies now directly or indirectly support the systematic anti-Catholic discriminatory practices in Northern Ireland. My legislation will end this shameful record. It will not only enlist these companies in the effort to wipe out discrimination in the workplace in Northern Ireland, but will help enlighten other nations which do business in Northern Ireland.

Mr. President, I realize that this legislation has little chance of passing during this Congress, but I truly believe that this body must address important issues in the near future. I plan to reintroduce this bill in the next Congress and to push actively for its enactment.

Mr. President, I ask unanimous consent that the text of my bill be printed in its entirety in the RECORD at the conclusion of my remarks.

Thank you, Mr. President.

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

S. 2909

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Northern Ireland Fair Employment Practices Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Overall unemployment in Northern Ireland exceeds 20 percent.

(2) Unemployment in some neighborhoods of Northern Ireland comprised of religious minorities has exceeded 50 percent.

(3) In the past 10 years 27 percent of Northern Ireland's industrial jobs have disappeared.

(4) Economic conditions in Northern Ireland have contributed to the emigration in recent years of more than 7,000 people each year.

(5) The Industrial Development Organization for Northern Ireland lists 25 firms in Northern Ireland which are controlled by United States persons.

(6) Many of these firms have become de facto partners in discriminating against religions minorities in employment practices and conditions.

(7) A comprehensive study of the discriminatory practices of United States businesses in Northern Ireland by the Reverend Brain Brady, the former head of the religion department at Saint Joseph's College in Belfast, noted that in the average manufacturing company controlled by a United States person in Northern Ireland, 18.8 percent of the employees are Catholic and 73.2 percent are Protestant, a work force ratio that is disproportionate to the number of Catholics and Protestants in the general population of Northern Ireland, which is 38 percent Catholic and 62 percent Protestant.

(8) The religious minority population of Northern Ireland is frequently subject to discriminatory hiring practices by United States businesses which have resulted in a disproportionate number of minority individuals holding menial and low-paying jobs and alarmingly high layoffs of minority employees in times of recession.

(9) The MacBride Principles are a nine point set of guidelines for fair employment in Northern Ireland which establishes a corporate code of conduct to promote equal access to regional employment but does not require disinvestment or demand quotas on imports.

SEC. 3. RESTRICTION ON IMPORTS.

An article from Northern Ireland may not be entered, or withdrawn from warehouse for consumption, in the customs territory of the United States unless there is presented at the time of entry to the customs officer concerned documentation indicating that the enterprise which manufactured or assembled such article was in compliance at the time of manufacture with the principles described in section 5.

SEC. 4. COMPLIANCE WITH FAIR EMPLOYMENT PRINCIPLES.

(a) COMPLIANCE.—Any United States person who—

(1) has a branch or office in Northern Ireland, or

(2) controls a corporation, partnership, or other enterprise in Northern Ireland,

in which more than 20 people are employed shall take the necessary steps to insure that, in operating such branch, office corporation, partnership, or enterprise, those principles relating to employment practices set forth in section 5 are implemented and the Fair Employment Act of Northern Ireland is complied with.

(b) REPORT.—Each United States person referred to in subsection (a) shall submit to the Secretary—

(1) a detailed and fully documented annual report, signed under oath, on showing compliance with the provisions of this Act; and

(2) such other information as the Secretary determines is necessary.

SEC. 5. MACBRIDE PRINCIPLES.

The principles referred to in section 4, which are based on the MacBride Principles, are as follows:

(1) Eliminating religious discrimination in managerial, supervisory, administrative, clerical, and technical jobs and significantly increasing the representation in such jobs of individuals from underrepresented religious groups.

(2) Providing adequate security for the protection of minority employees at the workplace.

(3) Banning provocative sectarian and political emblems from the workplace.

(4) Advertising publicly all job openings and undertaking special recruitment efforts to attract applicants from underrepresented religious groups, including—

(A) establishing procedures to assess, identify, and actively recruit minority individuals with potential for further advancement; and

(B) identifying those minority individuals who have high management potential and

enrolling them in accelerated management programs.

(5) Establishing layoff, recall, and termination procedures which do not favor particular religious groupings.

(6) Providing equal employment for all employees, including implementing equal and nondiscriminatory terms and conditions of employment for all employees, and abolishing job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

(7) Developing training programs that will prepare substantial numbers of minority employees for managerial, supervisory, administrative, clerical, and technical jobs, including—

(A) expanding existing programs and forming new programs to train, upgrade, and improve the skills of all categories of minority employees;

(B) creating on-the-job training programs and facilities to assist minority employees to advance to higher paying jobs requiring greater skills; and

(C) establishing and expanding programs to enable minority employees to further their education and skills at recognized education facilities.

(8) Appointing a senior management staff member to oversee the United States person's compliance with the principles described in this section.

SEC. 6. WAIVER OF PROVISIONS.

In any case in which the President determines that compliance by a United States person with the provisions of this Act would harm the national security of the United States, the President may waive those provisions with respect to that United States person. The President shall publish in the Federal Register each waiver granted under this section and shall submit to the Congress a justification for granting each such waiver. Any such waiver shall become effective at the end of 90 days after the date on which the justification is submitted to the Congress unless the Congress, within that 90-day period, adopts a joint resolution disapproving the waiver. In the computation of such 90-day period, there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain or because of an adjournment of the Congress sine die.

(b) CONSIDERATION OF RESOLUTIONS.—

(1) Any resolution described in subsection (a) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(2) For the purpose of expediting the consideration and adoption of a resolution under subsection (a) in the House of Representatives, a motion to proceed to the consideration of such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

SEC. 7. DEFINITIONS AND PRESUMPTIONS.

(a) DEFINITIONS.—For the purposes of this Act—

(1) the term "United States person" means any United States resident or national and any domestic concern (including any permanent domestic establishment of any foreign concern);

(2) the term "Secretary" means the Secretary of Commerce;

(3) the term "Northern Ireland" includes the counties of Antrim, Armagh, Londonderry, Down, Tyrone, and Fermanagh; and

(b) PRESUMPTION.—A United States person shall be presumed to control a corporation, partnership, or other enterprise in Northern Ireland if—

(1) the United States person beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the corporation, partnership, or enterprise;

(2) the United States person beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the corporation, partnership, or enterprise, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(3) the corporation, partnership, or enterprise is operated by the United States person pursuant to the provisions of an exclusive management contract;

(4) a majority of the members of the board of directors of the corporation, partnership, or enterprise are also members of the comparable governing body of the United States person;

(5) the United States person has authority to appoint the majority of the members of the board of directors of the corporation, partnership, or enterprise; or

(6) the United States person has authority to appoint the chief operating officer of the corporation, partnership, or enterprise.

By Mr. KERRY:

S.J. Res. 423. Joint resolution to designate the week beginning January 19, 1987, as "Shays' Rebellion Week," and Sunday, January 25, 1987, as "Shays' Rebellion Day"; to the Committee on the Judiciary.

SHAYS' REBELLION WEEK AND SHAYS' REBELLION DAY

● Mr. KERRY. Mr. President, I am introducing today a joint resolution commemorating the bicentennial of an historic event in American history—Shays' Rebellion.

Shays' Rebellion was the result of citizens' discontent with the Government and the economy following the Revolutionary War. Unrest occurred in almost every State, but revolt took place in Massachusetts where the war had devastated its major industries. Exports fell, resulting in massive public indebtedness. The only accepted tender for a long while was cash, and its continuous fluctuation made meeting costs close to impossible. Debts were high and punishments were severe. Overall, a general distrust of the Government persisted because public grievances were not being addressed.

By 1786, feelings of unrest had spread across the Massachusetts Commonwealth. Daniel Shays and a group of farmers obstructed court proceedings, demanding that the court be attentive to their concerns. The unrest culminated on January 25, 1787, when Shays and 1,100 of his followers stormed an arsenal in Springfield. The uprising brought national attention to Shays and his followers. People in all States were alarmed by the revolutionary disorder and the underlying social and economic problems that had caused such a reaction.

Plagued by a weak and disorganized economy, and an unresponsive Government, the rebels in Massachusetts had voiced their dissatisfaction with the postwar crisis. The rebellion hastened special reforms in taxation and judicial procedure. In addition, it alerted leaders of America to the frailties of the Government under the Articles of Confederation and served as the impetus for the drafting of our Constitution.

The influence of Shays' Rebellion in the formation of our present Government deserves recognition by Congress and the people of the United States. I invite my colleagues to support a joint resolution celebrating the historical significance of this event. Please join me in designating January 19 through January 25, 1987 as Shays' Rebellion Week and Sunday, January 25 as Shays' Rebellion Day. An identical resolution (H.J. Res. 10) has been introduced in the House by Congressman CONTE, of Massachusetts, and has over 218 cosponsors.

Mr. President, Shays' Rebellion was more than just an uprising by a group of western Massachusetts farmers; it represents the spirit of the American way and the struggle of a people to perservere and combat injustice. We who have reaped the benefits of the seeds Daniel Shays and his rebels sowed owe them enthusiastic recognition. I believe this commemorative resolution is a step in that direction.●

ADDITIONAL COSPONSORS

S. 812

At the request of Mr. HEINZ, the names of the Senator from North Carolina [Mr. BROYHILL] and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 812, a bill to amend the Export Administration Act of 1979 to authorize controls on the report of capital from the United States.

S. 1804

At the request of Mr. HATCH, the name of the Senator from Virginia [Mr. WARNER] was added as cosponsor of S. 1804, a bill to provide for Federal incentive grants to encourage State health care professional liability reform.

S. 2209

At the request of Mr. DOLE, the name of the Senator from California [Mr. CRANSTON] was added as cosponsor of S. 2209, a bill to make permanent and improve the provisions of section 1619 of the Social Security Act, which authorizes the continued payment of SSI benefits to individuals who work despite severe medical impairment; to amend such act to require concurrent notification of eligibility for SSI and Medicaid benefits and notification to certain disabled SSI recipients of their potential eligi-

bility for benefits under such section 1619; to provide for a GAO study of the effects of such section's work incentive provisions; and for other purposes.

S. 2651

At the request of Mr. DECONCINI, the names of the Senator from California [Mr. CRANSTON] and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of S. 2651, a bill to reduce Federal liability for the relocation of certain Navajo Indians through the exchange of certain lands between the Hopi and Navajo Indian Tribes, and for other purposes.

S. 2770

At the request of Mr. COCHRAN, the name of the Senator from Louisiana [Mr. LONG] was added as cosponsor of S. 2770, a bill to amend the Farm Credit Act of 1971 to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the Farm Credit System, and for other purposes.

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 2770, supra.

SENATE JOINT RESOLUTION 352

At the request of Mr. METZENBAUM, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Florida [Mrs. HAWKINS], the Senator from North Carolina [Mr. HELMS], the Senator from Nevada [Mr. HECHT], the Senator from North Dakota [Mr. ANDREWS], and the Senator from South Dakota [Mr. ABDNOR] were added as cosponsors of Senate Joint Resolution, a joint resolution to designate the week beginning September 7, 1986, as "Gaucher's Disease Awareness Week."

SENATE JOINT RESOLUTION 385

At the request of Mr. RIEGLE, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Ohio [Mr. GLENN] were added as cosponsors of Senate Joint Resolution 385, a joint resolution to designate October 23, 1986 as "National Hungarian Freedom Fighters Day."

SENATE JOINT RESOLUTION 387

At the request of Mr. HECHT, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 387, a joint resolution to designate the week of October 19, 1986, through October 26, 1986, "National Housing Week."

SENATE JOINT RESOLUTION 388

At the request of Mr. LEVIN, the names of the Senator from Maine [Mr. COHEN] and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from Utah [Mr. HATCH] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship With Finland."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 408

At the request of Mr. DOLE, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of Senate Joint Resolution 408, a joint resolution designating "American Physiologists Week."

SENATE JOINT RESOLUTION 417

At the request of Mr. NUNN, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Joint Resolution 417, a joint resolution designating the week of January 25 through January 31, 1987, as "National Productivity Improvement Week".

SENATE JOINT RESOLUTION 418

At the request of Mr. PACKWOOD, the names of the Senator from Wisconsin [Mr. KASTEN] and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of Senate Joint Resolution 418, a joint resolution to designate February 4, 1987, as "National Women in Sports Day."

SENATE JOINT RESOLUTION 419

At the request of Mr. MOYNIHAN, the names of the Senator from California [Mr. CRANSTRON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Hawaii [Mr. INOUYE], the Senator from Kansas [Mr. DOLE], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986, as "National SEEK and College Discovery Day."

SENATE JOINT RESOLUTION 420

At the request of Mr. GOLDWATER, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of Senate Joint Resolution 420, a joint resolution relating to the commemoration of January 28, 1987, as a "National Day of Excellence."

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. WEICKER] was added as a cosponsor of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE RESOLUTION 454

At the request of Mr. RIEGLE, the names of the Senator from Illinois [Mr. SIMON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Massachusetts [Mr. KERRY], the Senator from New York [Mr. MOYNIHAN], the Senator from Iowa [Mr. GRASSLEY], the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of Senate Resolution 454, a resolution urging the full restoration in Eastern Europe of the Byzantine Rite Catholic Church and of freedom of religion for the people of all Captive Nations, and for other purposes.

AMENDMENT SUBMITTED

CONTINUING APPROPRIATIONS, FISCAL YEAR, 1987

NUNN AMENDMENT NO. 3164

Mr. STENNIS (for Mr. Nunn) proposed an amendment to the joint resolution (H.J. Res. 738), making continuing appropriations for the fiscal year 1987, and for other purposes; as follows:

Section 301, of title 23 add the following: "*Provided* that certain demonstration projects, as approved by the Secretary, specified in section 129 may have tolls applied". Section 129, of title 23 add the following subparagraphs:

"(j) notwithstanding Section 301 of this Title the Secretary shall permit Federal participation in not more than 4 projects in the States of Florida and Georgia to demonstrate the feasibility and practicality of construction of toll highways to meet capacity needs in high growth areas. *Provided*, That Federal participation in any toll highway project under this subsection shall not exceed 35% of total project cost and further provided that Federal aid funds used in a toll highway project under this subsection may be from any Federal aid system other than the interstate system funded under Section 104(b)(5)A". *Provided further*, that this provision shall apply only to non-interstate highways for new highway facilities or for projects that expand capacity on existing facilities, and the revenues raised by such tolls may only be used for the construction, reconstruction, maintenance, and operation of the tolled-facility.

HOLLINGS (AND OTHERS) AMENDMENT NO. 3165

Mr. STENNIS (for Mr. HOLLINGS, for himself, Mr. FORD, and Mr. KASTEN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the Joint Resolution, insert:

SEC. . REPORT ON PREDATORY PRICING PRACTICES

The Federal Trade Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and

to the Committee on Energy and Commerce of the House of Representatives the information specified in subsection (b) of this section every 6 months during fiscal year 1987. A report containing such information shall be submitted when the Commission submits its annual report to the Congress during such fiscal year, and such report may be included in the annual report. A separate report containing such information shall be submitted 6 months after the date of submission of any such annual report. Each such report shall contain such information for the period since the last submission under this section.

(b) Each such report shall list and describe, with respect to instances in which predatory pricing practices have been suspected or alleged—

(1) each complaint made, orally or in writing, to the offices of the Commission;

(2) each preliminary investigation opened or closed at the Commission;

(3) each formal investigation opened or closed at the Commission;

(4) each recommendation for the issuance of a complaint forwarded by the staff to the Commission;

(5) each complaint issued by the Commission;

(6) each opinion and order entered by the Commission;

(7) each consent agreement accepted provisionally or finally by the Commission;

(8) each request for modification of an outstanding Commission order filed with the Commission;

(9) each recommendation by staff pertaining to a request for modification of an outstanding Commission order; and

(10) each disposition by the Commission of a request for modification of an outstanding Commission order.

Such report shall include copies of all such consent agreements and complaints executed by the Commission referred to in such report. Where a matter has been closed or terminated, the report shall include a statement of the reasons for that disposition. The descriptions required under this subsection shall be as complete as possible but shall not reveal the identity of persons or companies complained about or those subject to investigation that have not otherwise been made public. The report shall include any evaluation by the Commission of the potential impacts of predatory pricing upon businesses (including small businesses).

MELCHER (AND BRADLEY) AMENDMENT NO. 3166

Mr. STENNIS (for Mr. MELCHER, for himself and Mr. BRADLEY) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following:

Sec. . Notwithstanding any provision of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act, the amounts appropriated for fiscal year 1987 for the Bureau of Indian Affairs for the Institute of American Indian Arts shall be available for use under part A of the Act and —

(1) that Act shall be implemented in a reasonable period of time and shall be fully implemented by no later than October 1, 1987,

(2) until the earlier of—

(A) October 1, 1987, or—

(B) The appointment and confirmation of a majority of the members of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development under section 1505(a)(1)(A) of that Act,

the Secretary of the Interior shall have the authority conferred upon such members under that Act, and

(3) until the earlier of—

(A) October 1, 1987, or

(B) the appointment of a President of such Institute under section 1508 of the Act,

the Secretary of the Interior shall have the authority conferred upon the President of such Institute under that Act.

LEAHY AMENDMENT NO. 3167

Mr. STENNIS (for Mr. LEAHY) proposed an amendment to the joint resolution (H.J. Res 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

Sec. . Notwithstanding any other provision of this joint resolution, for an additional amount for, "Environmental Protection Agency, Hazardous substance response trust fund", $600,000,000, for necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. (9611), to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, That funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510: *Provided further*, That of the amounts appropriated under this heading in Public Law 99-160, $600,000,000 are rescinded.

BYRD AMENDMENT NO. 3168

Mr. STENNIS (for Mr. BYRD) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following new title:

TITLE —AVIATION SAFETY

SHORT TITLE

Sec. . This title may be cited as the "Aviation Safety Commission Act of 1986".

COMMISSION ESTABLISHED

Sec. . (a) There is established a commission to be known as the Aviation Safety Commission (hereinafter referred to as the "commission").

(b)(1) The Commission shall be composed of seven members appointed by the President no later than 30 days after the date of enactment of this Act.

(2) Appointees to the Commission shall possess extensive experience and expertise at the highest executive levels of public or corporate management.

(3) No member of the Commission shall, at the time of such member's appointment, be an employee or officer of the Federal Government, nor shall any member have been an employee of the Federal Government for at least 3 years before such member's appointment to the Commission.

(4)(A) At least four members of the Commission, including the Chairman, shall not have performed any service or have been involved in any way in any business concern in air commerce or any aviation-related industry for at least 3 years before their appointment to the Commission.

(B) For the purposes of this paragraph, the term "air commerce" has the meaning given to such term in section 101(4) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(4)).

(c) The President shall appoint one of the members to serve as Chairman of the Commission.

(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Four members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f)(1) The Commission shall hold its first meeting within 30 days after the appointment of all members.

(2) The Commission shall meet at the call of the Chairman or a majority of the members.

(g) Members of the Commission shall serve until the expiration of the Commission pursuant to section 3(f) of this Act.

FUNCTIONS OF THE COMMISSION

Sec. . (a) The Commission shall make a complete study of the organization and functions of the Federal Aviation Administration (hereinafter referred to as the "Administration") and the means by which the Administration may most efficiently and effectively perform the responsibilities assigned to it by law and increase aviation safety.

(b) In conducting such study, the Commission shall consider whether—

(1) the Administration has been provided adequate resources and has adequately utilized the resources provided to ensure aviation safety;

(2) the dual responsibilities of the Administration of promoting commercial aviation and ensuring aviation safety are in conflict, and whether such conflict impedes the effective maintenance and enhancement of aviation safety;

(3) the Administration should be reorganized as an independent Federal agency with the promotion, maintenance, and enhancement of aviation safety as the sole responsibility of such agency;

(4) the promotion of commercial aviation should be assigned as a responsibility to another agency of the Federal Government;

(5) airline deregulation has an adverse effect on the margin of aviation safety, including a review of whether the practice of airline self-compliance with respect to aviation maintenance standards is an outmoded approach in an environment designed to maximize cost-savings; and

(6) it is feasible to make mandatory certain or all of the safety recommendations issued by the National Transportation Safety Board.

(c) The study conducted under this section shall include findings and recommendations, including any recommendations for legislative action, regarding—

(1) the most appropriate and effective organizational approach to ensuring aviation safety; and

(2) measures to improve the enforcement of Federal regulations relating to aviation safety.

(d) In conducting such study, the Commission shall consult with the National Transportation Safety Board and a broad spectrum of representatives of the aviation industry, including—

(1) air traffic controllers;

(2) representatives of the commercial aviation industry;

(3) representatives of airways facilities technicians;

(4) independent experts on aviation safety;

(5) former Administrators of the Administration; and

(6) representatives of civil aviation.

(e) Within 9 months after the date of enactment of this Act, the Commission shall submit a report on the study conducted pursuant to this section to the President and to each House of Congress. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative and administrative actions.

(f) The Commission shall cease to exist 9 months after the date of enactment of this Act.

POWERS AND ADMINISTRATIVE PROVISIONS

SEC. . (a) The Commission may, for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and publish such reports as the Commission considers appropriate.

(b)(1) Subject to such rules as may be adopted by the Commission, the Chairman, 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 of such title relating to classification or chapter 53 of such title relating to General Schedule pay rates, may—

(A) appoint and fix the compensation of such staff personnel as the Chairman considers necessary, including an executive director who may be compensated at a rate not in excess of that provided for level V of the Executive Schedule in title 5, United States Code; and

(B) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(2) Any person appointed as executive director pursuant to paragraph (1)(A) of this subsection shall meet the same qualifications required of members pursuant to section (b) of this Act.

(c) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such information as the Commission considers necessary to carry out its functions.

(d) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

(e) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) The Commission may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(g) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission may take under this section.

COMPENSATION OF MEMBERS

SEC. . Members of the Commission shall serve without compensation, but shall be reimbursed for travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business and engaged in the actual performance of duties of the Commission.

APPROPRIATIONS

SEC. . There is hereby appropriated for fiscal year 1987, $2,000,000 to carry out the provisions of this Act.

DOMENICI AMENDMENT NO. 3169

Mr. STENNIS (for Mr. DOMENICI) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At an appropriate place in the bill insert the following new section:

SEC. . In section 108B(4)(A) of the Agricultural Act of 1949, as added by section 705 of the Food Security Act of 1985, insert the following after "additional peanuts": "(other than net gain on additional peanuts in separate type pools established under paragraph(3)(B)(i) for Valencia peanuts produced in New Mexico)".

FORD AMENDMENT NOS. 3170 AND 3171

Mr. STENNIS (for Mr. FORD) proposed two amendments to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution add the following new section:

SEC. CERTAIN COSTS OF PRIVATE FOUNDATIONS IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFIED DISTRIBUTIONS.

(a) IN GENEREAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such txable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal to taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) Incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 100 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response Compensation and Liaiblity Act.

In the appropriate section of the bill, add the following section:

SEC. . Notwithstanding any other provisions of title 23, the Secretary of Transportation shall carry out the following project:

I-75 corridor in Kenton County, Kentucky, to examine the feasibility of unmanned radar units for safety purposes.

CHILES AMENDMENT NO. 3172

Mr. STENNIS (for Mr. CHILES) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Commission to Prevent Infant Mortality".

FINDINGS AND PURPOSE

SEC. 2. The Congress finds and declares that:

(1) The United States ranked seventeenth in the world in 1982 with an infant mortality rate of eleven and two-tenths deaths per thousand live births, a higher rate than many developed nations of the world.

(2) The infant mortality rate in some areas of the United States is twice the national rate.

(3) The main cause of a high infant mortality rate is low birthweight. Some 6.7 per centum of all infants born in the United States are of low birthweight.

(4) Inadequate prenatal care is associated with an increased risk of low birthweight. Some twenty-five percent of all pregnant women in the United States do not begin prenatal care until after the first three months of pregnancy, if at all.

(5) In certain areas throughout the United States, there exist barriers to medical services, nutritional support, educational opportunities, and financial support for adequate health care for pregnant mothers and infants. The absence of needed support services during prenatal care, labor and delivery, and post-partum care through the age of one year contributes substantially to a high national infant mortality rate.

(6) Our Nation, which benefits from many diverse governmental and private resources, has a patchwork, uncoordinated, and little understood approach to the delivery of services associated with preventing infant mortality.

(7) The Congress and the President can act to prevent infant mortality and the incidence of low birthweight infants by establishing a commission by law, whose purpose shall be to address respective governmental and private roles in the delivery of services associated with preventing infant mortality, and to recommend actions designed to change and improve the Nation's comprehensive approach to this national problem.

DEFINITION

SEC. 3. For the purposes of this Act, the term "infant mortality" refers to the number of infants born alive but who die before their first birthday.

ESTABLISHMENT OF A NATIONAL COMMISSION

SEC. 4. (a) To accomplish the purpose set forth in section 2 of this Act there is established the National Commission to Prevent Infant Mortality (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of fifteen members, as follows:

(1) Two members of the Senate, one to be selected by the majority leader of the Senate, the other to be selected by the minority leader of the Senate.

(2) Two members of the House, one to be selected by the Speaker of the House, the other to be selected by the minority leader of the House.

(3) Three members from representatives of State and local government; to be selected by the President and no more than two

of whom shall be members of the same political party. One shall be a Governor; one shall be a State legislator; and one shall be a representative of local government.

(4) The Secretary of Health and Human Services shall be a member.

(5) The Comptroller General of the United States shall be a member.

(6) Six at large members, with demonstrated expertise in maternal and child health, shall be jointly selected by the majority leader of the Senate and the Speaker of the House.

(c) The Commission shall select a Chairperson and Vice Chairperson from among its members.

(d) Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(e) The Commission shall meet at the call of the Chairperson.

(f) Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

DUTIES OF THE COMMISSION

SEC. 5. (a) The Commission shall:

(1) Identify and examine comprehensively Federal, State, local, and private resources which impact infant mortality, including but not limited to—

(A) the effectiveness and adequacy of programs such as the Supplemental Feeding Program for Women, Infants, and Children; the Maternity and Infant Care Program; the Improved Pregnancy Outcome Program; the Maternal and Child Health Block Grant; Community Health Centers; prepregnancy services and other programs that increase access to prenatal and postnatal education, care, and nutrition;

(B) the effectiveness of current Federal and State policies under the Medicaid Program to ensure adequate access to prenatal and postnatal care for low-income pregnant women and mothers;

(C) the role of income maintenance and other programs that impact infant mortality such as Aid to Families with Dependent Children and Federal housing subsidies; and

(D) the adequacy of current Federal and State efforts to enable an appropriate distribution of properly trained health care professionals to provide comprehensive maternal and child health services.

(2) Identify current financial, intergovernmental, and within the Federal Government, interagency barriers to the health care needed to prevent high infant mortality.

(3) Review recommendations made in recent regional and national reports that promote the health status of childbearing women and their infants and carry forward such recommendations as deemed appropriate.

(b) The Commission shall—

(1) recommend a national policy designed to change and improve the current approach to preventing infant mortality, including recommendations concerning appropriate roles for the Federal Government, States, local governments, and private institutions;

(2) recommend to the Congress and the President what specific changes are needed within Federal laws and Federal programs to achieve an effective Federal role in preventing infant mortality; and

(3) present such recommendations to the President, the Speaker of the House, and the majority leader of the Senate no later than one year after enactment of this Act.

POWERS OF THE COMMISSION

SEC. 7. (a) The Commission, or at its direction, any subcommittee or member thereof, may for the purpose of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence and administer such oaths, as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission, subcommittee, or member thereof.

(b) The Commission may secure directly from any Federal department or agency such information as may be necessary to enable the Commission to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) To carry out this Act, the Commission may enter into such contracts and other arrangements to such extent or in such amounts as are provided in appropriation Acts, and without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Contracts and other arrangements may be entered into under this subsection with or without consideration or bond.

(d) The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

COMMISSION STAFF

SEC. 8. (a) The Chairperson and Vice Chairperson of the Commission shall appoint an executive director. The employment of such executive director shall be subject to confirmation by the Commission.

(b) The Commission may appoint and terminate the executive director selected under subsection (a) and such other personnel as it considers appropriate to assist in the performance of its duties under this Act, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such executive director and other personnel without regard to the provisions of Chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, except that the rate of pay for such executive director and other personnel may not exceed the rate payable for GS-18 of the General Schedule under section 5332 of such title.

(c) Service of an individual as a member of the Commission or employment of an individual by the Commission on a part-time or full-time basis and with or without compensation shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commision or as an employee of the Commission, shall not be considered service in any appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(d) Subject to such rules as may be prescribed by the Commission, the Chairman of the Commission may procure temporary and intermittent services under section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily rate payable for GS-18 of the General Schedule under section 5332 of such title.

SUNSHINE PROVISION

SEC. 9. The Commmission shall establish procedures to ensure its proceedings are open to the public to the maximum extent practicable.

TERMINATION OF THE COMMISSION

SEC. 10. Ninety days after the Commission submits its recommendations as required by section 5(b)(3) the Commission shall terminate.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to the Commission $1,000,000. Amount appropriated under this section shall remain available until the day on which the Commission terminates under section 10.

HATCH AMENDMENT NO. 3173

Mr. STENNIS (for Mr. HATCH) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

Insert at the end thereof:

Section 623B(b)(2) of the Community Economic Development Act of 1981 is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, any Utah or local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with the approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan."

DOMENICI AMENDMENT NO. 3174

Mr. STENNIS (for Mr. DOMENICI) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

H.J. Res. 738 is amended by inserting in the appropriate place in the resolution the following new section:

SEC. . Section 535 of S. 2824 as reported by the Senate Committee on Appropriations on September 16, 1986, is amended by inserting before the period at the end thereof the following: "as amended by section 2011 of H.R. 5484 as passed by the Senate on September 30, 1986".

WEICKER (AND DODD) AMENDMENT NO. 3175

Mr. STENNIS (for Mr. WEICKER, for himself and Mr. DODD) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, add the following new section:

SEC. . CONNECTICUT HOSPICE WAIVER.

Section 122(j) of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to waivers for certain hospices) is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary of Health and Human Services shall grant a waiver of the limitation imposed by section 1861(dd)(2)(A)(iii) of the Social Security Act (relating to the aggregate limit on the number of days of inpatient care) to any institution that was

granted a waiver under paragraph (1). Such waiver shall provide for the application of such section to the institution by substituting "50" for "20", shall apply only to beds in service as of July 1, 1986, and shall become effective October 1, 1986.".

THURMOND (AND HOLLINGS) AMENDMENT NO. 3176

Mr. STENNIS (for Mr. THURMOND, for himself and Mr. HOLLINGS) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, insert:

That, to provide for a security buffer zone for the United States Department of Energy's Savannah River Plant near Aiken, South Carolina, title, control, and custody to six thousand twenty-one acres, more or less, of United States Department of Agriculture, Forest Service, lands shown on a map entitled "Forest Service Property Transfer, Savannah River Plant, Aiken, South Carolina", dated June 1984, are transferred without cost or reimbursement to the United States Department of Energy. The map and legal description of the boundaries of these lands shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, the Director of Real Property and Facilities Management, United States Department of Energy, and appropriate field offices of those agencies.

SEC. 2. This Act does not affect valid existing rights, or interests in existing land use authorizations, except that any right or authorization shall be administered by the Department of Energy after the enactment of this Act. Reissuance of any authorization shall be in accordance with applicable law and the regulations of the Department of Energy, except that the change of administrative jurisdiction shall not in itself constitute a ground to deny the renewal or reissuance of any authorization.

DANFORTH AMENDMENT NO. 3177

Mr. STENNIS (for Mr. DANFORTH) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 5, line 3, insert the following immediately before the period: ", other than the provisions regarding use of funds for personnel compensation and benefits for Commissioners of the Consumer Product Safety Commission contained in H.R. 5313".

GRASSLEY (AND HARKIN) AMENDMENT NO. 3178

Mr. STENNIS (for Mr. GRASSLEY, for himself and Mr. HARKIN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, insert:

NON-PROFIT NATIONAL RURAL DEVELOPMENT AND FINANCE CORPORATION

Section 1323(a)(1) of the Food Security Act of 1985 is amended by striking out "September 30, 1986," and inserting in lieu thereof "September 30, 1987,", and

Section 1323(a) is further amended by adding at the end thereof a new Subsection

(5) Notwithstanding any provision to the contrary of Subsection (4) above, the $20,000,000 which was available pursuant to Subsection (4) shall continue to be available and shall be used by the Secretary prior to September 30, 1987 to guarantee loans for the national rural development and finance program and shall remain available until expended.

and,

Section 1323(b)(1) of such Act is amended by striking out "September 30, 1986,", and inserting the words "made or to be" after the word "guarantees",

Provided further, That such grant funds may be used by such corporation to provide technical assistance and financial assistance, including capitalizing revolving loan programs, pursuant to the Act.

LEAHY (AND MATHIAS) AMENDMENT NO. 3179

Mr. STENNIS (for Mr. LEAHY, for himself and Mr. MATHIAS) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the resolution add the following:

Since Canada and the United States have demonstrated interest in sharing the benefits of transborder broadcast transmissions;

Since sharing broadcast transmissions originating in Canada and the United States is in the interest of international comity;

Since it is a recognized principle that authors of literary and artistic works should have the exclusive right of authorizing the broadcasting of their works and receive equitable remuneration for use of their creative products;

Since the United States copyright law, section 111 of title 17, United States Code, provides compensation to Canadian program owners for the retransmission of their copyrighted broadcast programs in the United States, and in some cases, exclusive rights and full copyright control for the use of such programs, Canadian law permits the unauthorized and uncompensated retransmission of United States programs in Canada;

Since the Government of Canada has expressed its intention to meet the challenge of creating an appropriate and balanced copyright environment through recognition of a general retransmission right in proposed revisions of Canada's 1924 Copyright Act; and

Since 1983, while the Government of Canada has discussed the possibility of introducing new copyright legislation, the unauthorized and uncompensated retransmission of United States origin television programming has been permitted to expand throughout Canada: Now, therefore, be it declared. That it is the sense of the Senate that—

(1) unauthorized and uncompensated retransmission of United States origin television programming included in United States broadcast signals should not be permitted to expand further in Canada,

(2) this longstanding issue of Canada's unauthorized and uncompensated retransmission of United States broadcast signals should receive speedy and efficient resolution, and

(3) the Senate, recognizing the significant potential for aiding the international free flow of information through the medium of television, and affirming the universal principle of fairness and equity through remuneration for use of television programming, should support the efforts of the United States Senior Interagency Group on International Communication and Information Policy, co-chaired by the Departments of State and Commerce, and its working group on Copyright and Intellectual Property, chaired by the National Telecommunications and Information Administration, to achieve an immediate settlement of the retransmission issue with the Government of Canada.

STENNIS AMENDMENT NO. 3180

Mr. STENNIS proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

On page 2, line 12, strike out the period and insert in lieu thereof a colon and the following: "*Provided,* That, during fiscal year 1987, the Commodity Credit Corporation shall use $1,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under section 4(m) of the Commodity Credit Corporation Charter Act. In addition to any sales required under any other Act, the Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than $1,000,000."

MOYNIHAN (AND OTHERS) AMENDMENT NO. 3181

Mr. STENNIS (for Mr. MOYNIHAN, for himself Mr. KERRY, Mr. KENNEDY, Mr. BOREN, and Mr. MITCHELL) proposed an amendment to the joint resolution (H.J. Res. 738) supra, as follows:

At the end of the joint resolution, add the following:

SEC. . Section 445(b)(1) of the Social Security Act is amended by striking out "June 30, 1985," and inserting in lieu thereof "June 30, 1987,".

Section 445(d) of such Act is amended by striking out "June 30, 1984," and inserting in lieu thereof "June 30, 1987," and by striking out "June 30, 1987" and inserting in lieu thereof "June 30, 1988".

THURMOND AMENDMENT NO. 3182

Mr. STENNIS (for Mr. THURMOND) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, insert:

Add at the end of 18 U.S.C. 2516(2):

"Nothing in this chapter shall be deemed to prohibit a law enforcement officer, in a state that does not have a statute authorizing or approving the interception of wire, electronic or oral communications or a statute forbidding such interception, from intercepting a wire, electronic or oral communication in the course of investigating an ongoing hostage taking situation if a suspect in the hostage taking situation is reasonably believed to be a participant in the communication, under circumstances in which it is impractical to obtain a court order authorizing such interception and reasonable to

assume the implied consent of the hostage to the interception of such communication.

DOMENICI AMENDMENT NO. 3183

Mr. STENNIS (for Mr. DOMENICI) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At an appropriate place in the joint resolution insert the following new section:

SEC. . None of the funds provided in this Act may be used to implement the uranium enrichment criteria submitted to Congress on July 24, 1986, pursuant to section 161v of the Atomic Energy Act of 1954.

HUMPHREY (AND ARMSTRONG) AMENDMENT NO. 3184

Mr. HATFIELD (for Mr. HUMPHREY, for himself and Mr. ARMSTRONG) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . DENIAL OF TAX BENEFITS FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.

(a) DENIAL OF TAX-EXEMPT STATUS.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DENIAL OF EXEMPTION FOR ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—An organization shall not be treated as described in subsection (a) if such organization performs, finances, or provides facilities for any abortion, except where the life of the mother would be endangered if the fetus were carried to term."

(b) DENIAL OF ELIGIBILITY FOR CHARITABLE CONTRIBUTION.—

(1) INCOME TAX.—Section 170(c) (defining charitable contribution) is amended by adding at the end thereof the following: "For purposes of this section, such term does not include a contribution or gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m)."

(2) ESTATE TAX.—

(A) IN GENERAL.—Section 2055 (relating to transfers for public, charitable, and religious uses), as amended by section 717, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DENIAL OF DEDUCTION FOR CONTRIBUTION TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a transfer to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(B) TECHNICAL AMENDMENTS.—

(i) Subparagraph (E) of section 2106(a)(2) (relating to transfers for public, charitable, and religious uses from taxable estates of nonresidents not citizens) is amended by striking out "section 2055(e)" and inserting in lieu thereof "subsections (e) and (g) of section 2055".

(ii) Subparagraph (F)(ii) of section 2106(a)(2), as amended by section 717, is amended by striking out "section 2055(g)" and inserting in lieu thereof "section 2055(h)".

(3) GIFT TAX.—Section 2522 (relating to charitable and similar gifts), as amended by section 717, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (f) the following new subsection:

"(e) DENIAL OF DEDUCTION FOR CONTRIBUTIONS TO ORGANIZATIONS WHICH PERFORM, FINANCE, OR PROVIDE FACILITIES FOR ABORTIONS.—No deduction shall be allowed under this section for a gift to or for the use of any organization which performs, finances, or provides facilities for any abortion (within the meaning of section 501(m))."

(c) EFFECTIVE DATES.—

(1) ABORTIONS AFTER DATE OF ENACTMENT.—The amendments made by this section shall take into account only abortions (within the meaning of section 501(m) of the Internal Revenue Code of 1954 as added by this section) performed after the date of the enactment of this Act.

(2) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on September 30, 1986.

(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to estates of decedents dying, and transfers, after September 29, 1986.

WARNER (AND TRIBLE) AMENDMENT NO. 3185

Mr. WARNER (for himself and Mr. TRIBLE) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the bill, add the following:

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.

(2) 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.—

(A) 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 (i) 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 Improvement 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) EXECPTIONS.—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, tariffs, 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 of operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance of 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.

(11) 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, whichever 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 Dulles International Airport and Washington National 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 for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

SEC. 6007. AIRPORTS AUTHORITY.

(a) POWER 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 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 Airports 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 familes 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 Authority 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 which an exception may be granted.

(3) 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 be appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 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 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 year 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) ACTION 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 established 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 interest 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 transferred 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 health 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 reasonably 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 employed 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 section 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 Authority 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 authorized 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 regulations entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 93.124) shall cease to be in effect on the date of the enactment of this title.

SEC. 6110. AUTHORITY TO NEGOTIATE EXTENSION 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.

WILSON (AND CRANSTON) AMENDMENT No. 3186

Mr. WILSON (for himself and Mr. CRANSTON) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 8 line 12 strike the following ," except that no activity authorized by such Acts shall be funded beyond September 30, 1987."

THURMOND AMENDMENT NO. 3187

Mr. STENNIS (for Mr. THURMOND) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following:

SEC. . Section 17(d)(4)(G) of the United States Housing Act of 1937 is amended by inserting before the semicolon the following: "(36 months after notice in the case of projects for which funding notices were issued prior to July 23, 1985)".

LEAHY (AND MOYNIHAN) AMENDMENT NO. 3188

Mr. STENNIS (for Mr. LEAHY and Mr. MOYNIHAN) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

On page 5, line 3, in the bill, add the following language: "The method of calculation, the preliminary fee, and the percentage established for administrative fees paid to a public housing agency administering a contract under this subsection shall be the method of calculation, the preliminary fee, and the percentage established by the Secretary as of September 30, 1986.".

THURMOND AMENDMENT NO. 3189

Mr. STENNIS (for Mr. THURMOND) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, add the following new section:

SEC. . WAIVER OF CERTAIN MEDICAID REQUIREMENTS.

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984, and before July 1, 1985, to individuals—

(1) who are not described in section 1902(a)(10)(A) of such Act,

(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this section, are determined by the state agency administering or supervising the administration of such plan to have been so eligible.

RUDMAN AMENDMENT NO. 3190

Mr. RUDMAN proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

On page 2, line 24, strike"." and insert the following: "except that, for purposes of this joint resolution, the paragraph under the heading 'Legal Services Corporation' shall be amended by striking the last proviso and inserting in lieu thereof the following: *'Provided further,* That if funds become available because a national support center has been defunded or denied refund pursuant to section 1011(2) of the Legal Services Corporation Act, as amended by this Act, such funds may be transferred to basic field programs, to be distributed in the manner specified by this paragraph, if the Appropiations Committees of both Houses of Congress have been notified pursuant to section 607 of this Act: *Provided further,* That none of the funds appropriated by this Act may be used to implement or enforce the regulations issued by the Legal Services Corporation regarding legislative and administrative advocacy (45 CFR Part 1612) printed for final publication in the "Federal Register" on May 31, 1984, (49 FR 22651) and on August 1, 1986 (51 FR 27539)'."

KASSEBAUM AMENDMENT NO. 3191

Mrs. KASSEBAUM proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 4, line 16, insert before the period a colon and the following; "*Provided,* That the provisions in such bill under the heading 'Assistance for Africa' shall not apply."

METZENBAUM (AND OTHERS) AMENDMENT NO. 3192

Mr. METZENBAUM (for himself, Mr. THURMOND, Mr. HEINZ, Mr. GLENN, Mr. SPECTER, Mr. DENTON, Mr. SIMON, Mr. LEVIN, Mr. BYRD, Mr. LUGAR, Mr. BOSCHWITZ, and Mr. QUAYLE) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the resolution, insert the following:

SEC. . (a) Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987 to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

(b) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that become subject to chapter 11, title 11 U.S. Code, after October 2, 1986.

(c) This section shall not apply during any period in which a case is subject to chapter 7, title 11 United States Code.

MELCHER AMENDMENT NO. 3193

Mr. MELCHER proposed an amendment which was subsequently modified to the joint resolution (H.J. Res. 738), supra; as follows:

At the apporpriate place in the resolution, add the following new sections:

SEC. . It is the sense of the Senate that the Secretary of Agriculture should make available not less than $10,000,000 worth of flour and cornmeal using the wheat and corn stocks of the Commodity Credit Corpo-

ration. Such flour and cornmeal shall be in addition to the traditional level of assistance made available under section 1114 of the Agriculture and Food Act of 1981, section 416(a) of the Agricultural Act of 1949, section 4 of the Agriculture and Consumer Protection Act of 1973, and any other provision of law administered by the Secretary.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30 1989, the Secretary of Agriculture shall make available to PVO's and Co-op's operating in the Republic of the Philippines and to the Government of the Philippines a total of at least 500,000 metric tons of wheat, 500,000 metric tons of soybeans, and 50 million pounds of dairy products under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(c) Commodities made available under this section during any fiscal year shall be subject to the agreement of the Republic of the Philippines—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the 3 preceding years.

(2) to permit the sale of commodities furnished under this section in the Republic of the Philippines and to use the local currency generated from such sales (A) by PVO's and Cooperatives to carry out approved programs of assistance in the Republic of the Philippines, (B) to operate lending programs in the manner provided for in section 108 of Public Law 480, and (C) to reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, during the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under this paragraph if they are used to pay expenses of the United States in the Philippines.

(d) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to the Philippines and friendly countries of Africa, under paragraph (b)(11)(A) of section 416 of the Agricultural Act of 1949, at least 500,000 metric tons of wheat and 45 million pounds of dairy products (of which at least 40 million pounds shall be nonfat dried milk, 30 million pounds shall be cheese, and 20 million pounds shall be butter), notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities made available to a nation under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the preceding three years;

(2) to sell any commodities furnished under this section within the nation and to use the local currencies generated from such sales to (A) establish and carry out lending programs in such nations in the manner provided for in section 108 of the Agricultural Trade Development and Assistance Act of 1954 and (B) reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

SEC. . (a) During the three-year period beginning with the fiscal year ending September 30, 1987, through the fiscal year ending September 30, 1989, the Secretary of Agriculture shall make available to—

(1) Nigeria, 400,000 metric tons of wheat 80 million pounds of dairy products, and 150,000 metric ton of soybeans;

(2) friendly countries in Africa, other than Nigeria, 1 million metric tons of wheat;

(3) India, 30,000 metric tons of soybeans and 50 million pounds of dairy products; and

(4) Bangladesh, 60,000 metric tons of wheat and 20 million pounds of dairy products.

under paragraph (11)(B) of section 416(b) of the Agricultural Act of 1949, notwithstanding any other requirement of such section except the requirements of paragraph (b)(3)(A) and except as provided for therein.

(b) Commodities be made available to a nation or PVO's and cooperatives operating in such nations under this section during any fiscal year shall be subject to the agreement of the nation—

(1) to acquire through commercial arrangements agricultural commodities directly or by private purchases during the fiscal year in an amount equal to 105 percent of the average amount of such agricultural commodities acquired through commercial arrangements during the preceding three years. In the case of Nigeria, an amount equal to the amount so acquired in the proceeding year.

(2) to permit the sale of commodities furnished under this section within the nation and to use the local currencies generated from such sales (A) by PVO's and cooperatives to carry out approved programs of assistance in the country and (B) to operate lending programs in the manner provided for in section 108 of Pub. Law 480, and reimburse the United States in dollars for costs incurred in furnishing such commodities, including transportation and processing, in the same fiscal year in which such costs were incurred. Reimbursements under this paragraph may be made in local currencies generated from the sale of the commodities under paragraph (2) if they are used to pay expenses of the United States in the recipient nation.

(c) To the extent practicable, commodities made available under this section shall be furnished in equal quantities during each of the three fiscal years.

(d) For purposes of this section, the term "friendly countries" shall have the same meaning as that term has under the Agricultural Trade Development and Assistance Act of 1954.

KENNEDY (AND OTHERS) AMENDMENT NO. 3194

Mr. KENNEDY (for himself, Mr GORE, and Mr. KERRY) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, there are appropriated $29,000,000 for carrying out section 1516(a), 1525(a), and 1534(a) of the Public Health Service Act.

(b) Notwithstanding any other provision of this joint resolution, the amount appropriated by section 101(i) of this joint resolution for each program, project, and activity administered by the Public Health Service shall be reduced by an equal percentage in order to achieve a reduction of $29,000,000 from the total amount appropriated by such section for all such programs, projects, and activities.

BUMPERS AMENDMENT NO. 3195

Mr. BUMPERS proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, insert the following:

"SEC. . Notwithstanding any other provision of this act, no funds shall be available for grants made by the United States Information Agency to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act.

PRESSLER AMENDMENT NO. 3196

Mr. JOHNSTON (for Mr. PRESSLER) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Subject to the provisions of subsection (b), all telephones sold, rented, or distributed by any other means in the United States after July 1, 1987, shall be hearing aid compatible, as defined in regulations promulgated by the Federal Communications Commission.

(b) The provisions of subsection (a) shall not apply to any telephone—

(1) that is manufactured before July 1, 1987; or

(2) which is not required to be registered under 47 C.F.R. 68.

JOHNSTON AMENDMENT NO. 3197

Mr. JOHNSTON proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following:

SEC. . (a) Notwithstanding any other provision of law, the Administrator of Gen-

eral Services is authorized during fiscal year 1987 to accept periodic reimbursements from the Senate for the cost of any equipment purchased for the Senate with funds from the General Supply Fund established under section 109 of the Federal Property and Administrative Services Act of 1949. The amount of each such periodic reimbursement shall be computed by amortizing the total cost of each item of equipment over the useful life of the equipment, as determined by the Administrator, in consultation with the Sergeant at Arms of the Senate.

(b) Subsection (a) applies to reimbursements to the General Supply Fund for any equipment purchased for the Senate before, on, or after the date of enactment of this section.

KENNEDY AMENDMENT NO. 3198

Mr. JOHNSTON (for Mr. KENNEDY) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the joint resolution, add the following new title:

TITLE II—ACQUIRED IMMUNE DEFICIENCY SYNDROME

SEC. 201. This title may be cited as the "Acquired Immune Deficiency Syndrome Service Coordination Act of 1986".

SEC. 202. The Congress finds that:

(1) Acquired immune deficiency syndrome is a catastrophic disease and public health problem with consequences which pose significant challenges to American society. It has been declared the Nation's "number one public health priority".

(2) As of June 1986, over 21,500 cases of acquired immune deficiency syndrome have been reported. According to estimates by the Public Health Service, by 1991 there may be 196,000 cases of acquired immune deficiency syndrome and 125,000 deaths from acquired immune deficiency syndrome. The number of Americans who are infected with the AIDS virus is currently estimated to be between 1,000,000 and 1,500,000 individuals.

(3) The Public Health Service estimates that by 1991, the direct costs to provide health care for individuals with acquired immune deficiency syndrome will be between $8,000,000,000 and $16,000,000,000. In 1986, it is estimated the United States will spend between $870,000,000 and $1,300,000,000 for health care for individuals with acquired immune deficiency syndrome.

(4) The costs of caring for individuals with acquired immune deficiency syndrome are disproportionately paid for in certain urban centers. As of June 1986, there are 23 cities in which there are at least 100 cases of acquired immune deficiency syndrome and 1,000 cases of acquired immune deficiency syndrome related complex. Careful coordination of health services has significantly reduced the cost of providing health care in some urban centers.

SEC. 203. Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART J—ACQUIRED IMMUNE DEFICIENCY SYNDROME

"DEMONSTRATION PROJECTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 391. (a) The Secretary may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion in service areas of coordinating networks for the provision of comprehensive and cost-effective health and support systems for eligible individuals. Services to be provided through each such network shall include—

"(1) comprehensive ambulatory care services specific to the diagnosis and treatment of acquired immune deficiency syndrome;

"(2) home health care services, hospice services, and respite care services;

"(3) counseling and mental health services; and

"(4) case management services; and

"(5) education for health personnel concerning acquired immune deficiency syndrome and concerning infection with the AIDS virus.

"(b) A grant made under this section shall not be used for—

"(1) the construction or major renovation of facilities;

"(2) the payment or reduction of deficits of an entity which resulted from obligations which were incurred by the entity prior to the date on which the entity receives payment under a grant under this section;

"(3) payment for items and services for which payment may be made under title XVIII of the Social Security Act or under a State plan approved under title XIX of such Act; or

"(4) payment for inpatient hospital services.

"(c) No grant may be made under this section for a demonstration project unless an application therefor is submitted to the Secretary in such form and at such time as the Secretary may prescribe. Each such application shall contain—

"(1) information demonstrating—

"(A) that existing resources in the service area to be served by the demonstration project are insufficient to meet the needs of such service area for care and treatment of eligible individuals; and

"(B) that the entity applying for the grant has a successful record of managing projects which provide a variety of health services;

"(2) assurance that appropriate local health care providers and voluntary organizations have been consulted in development of the application for the grant;

"(3) evidence of coordination with, and support for the application for such grant by, loan public health authorities;

"(4) assurances that the network to be supported by the grant will have appropriate relationships with an academic health center;

"(5) assurances that such network will make every reasonable effort to collect appropriate reimbursement for health services provided by or through such network to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

"(6) assurances that Federal funds made available under this section for any period will be used to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the services for which funds are provided under this section and will in no event supplant such State, local, and other non-Federal funds;

"(7) a description of the manner in which the entity applying for a grant under this section will evaluate the services and activities provided by or through the network to be developed, established, or expanded with such grant; and

"(8) such other information as the Secretary may prescribe.

"(d) In making grants under this section, the Secretary shall give special consideration to applicants from service areas with current or projected high incidences of eligible individuals, including service areas with current or projected high incidences of eligible individuals who are children or who are intravenous drug abusers.

"(e) The Secretary may not make a grant under this section in any fiscal year to any entity which receives or has received a grant under section 301 of this Act pursuant to the provisions of Public Law 99-178 for a project demonstrating the delivery of health care services to victims of acquired immune deficiency syndrome.

"(f) No grant under this section for any fiscal year may exceed $1,000,000.

"(g) For purposes of this section—

"(1) the term 'eligible individual' means any individual who has acquired immune deficiency syndrome or any individual who is infected with AIDS virus;

"(2) the term 'nonprofit private entity' means an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (other than a private foundation as defined in section 509(a) of such Code); and

"(3) the term 'service area' means a metropolitan area which has a significant incidence of acquired immune deficiency syndrome, as determined by the Secretary.

"(h) To carry out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1988. Amounts appropriated under this section shall remain available for obligation or expenditure until September 30, 1989.".

SEC. 204. The Secretary of Health and Human Services shall conduct, or shall provide for the conduct of, a survey to determine—

(1) the total number of children in the United States with acquired immune deficiency syndrome who have been abandoned by their parents and are living in hospital environments;

(2) the total number of children in the United States with acquired immune deficiency syndrome who have been placed in foster care;

(3) the problems encountered by social service agencies in placing children with acquired immune deficiency syndrome in foster care; and

(4) recommendations for improving the care of children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

HELMS AMENDMENT NO. 3199

Mr. HELMS proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the pending amendment, add the following:

SEC. . DISAPPROVAL OF ACTION OF THE DISTRICT OF COLUMBIA COUNCIL.

The Congress disapproves of the action of the District of Columbia Council described as follows: The Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170); and, notwithstanding any other provision of law, D.C. Law 6-170 shall be null and void effective from June 6, 1986.

COCHRAN AMENDMENT NO. 3200

Mr. COCHRAN proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place, insert the following new sections:

SEC. . CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph (16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. . LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be 1 local administrative area in any county for which there had been established less than 3 local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by pargaraph (1)), by striking out ": *Provided*," and all that follows through the period and inserting in lieu thereof a period.

BOREN (AND OTHERS) AMENDMENT NO. 3201

Mr. BOREN (for himself, Mr. DOLE Mr. ZORINSKY, Mr. ANDREWS, Mr. EXON, Mr. NICKLES, Mr. MELCHER, Mr. ABDNOR, Mrs. KASSEBAUM, and Mr. BURDICK) proposed an amendment to amendment No. 3200 proposed by Mr. COCHRAN to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of amendment 3200, insert the following new sections:

SEC. . BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

(a) Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

(b) The amendment made by this section shall not be applicable to any producer of 1986-crop wheat who (1) elects to have payments under section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 computed in accordance with the provisions of law in effect prior to the enactment of this Act and (2) so informs the Secretary of Agriculture in writing by December 1, 1986.

SEC. .ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 is amended by adding at the end thereof a new subsection (f) as follows:

"(f) For purposes of this subtitle, alfalfa and other multi-year grasses and legumes in rotation, as approved by the Secretary, shall be considered agricultural commodities.".

THURMOND AMENDMENT NO. 3202

Mr. JOHNSTON (for Mr. THURMOND) proposed an amendment to the joint resolution, (H.J. Res. 738), supra, as follows:

On page 7, line 18, immediately before the period, insert the following: ", except that in the administration of the provisions of section 603 of H.R. 5294, during fiscal year 1987, Erna Avari Patrick of Columbia, South Carolina shall be considered to have satisfied the requirement of clause (3) of such section.".

DOLE (AND OTHERS) AMENDMENT NO. 3203

Mr. DOLE (for himself, Mr. BYRD, Mr. LUGAR, Mr. PELL, Mr. EVANS, Mr. KERRY, Mr. DODD, Mr. INOUYE, Mr. KENNEDY, Mr. BRADLEY, Mr. THURMOND, Mr. DOMENICI, Mr. CRANSTON, Mr. MOYNIHAN, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. DIXON, Mr. TRIBLE, Mr. MATSUNAGA, Mr. ROTH, and Mr. GORTON) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the joint resolution add the following new section.

SEC. . (a) Notwithstanding any other provision of law, in addition to amounts otherwise made available by this joint resolution for the Philippines, the President shall make available $200,000,000 of funds appropriated by this joint resolution for economic assistance to the Philippines. Funds made available by this subsection shall be transferred from accounts contained within budget function 150.

(b) The amounts of funds transferred from any program, project or activity pursuant to subsection (a) shall not exceed 3 percent of the amounts appropriated or otherwise made available by this joint resolution for such program, project or activity.

(c) Funds transferred for purposes of subsection (a) may only be transferred: (1) from accounts within the jurisdiction of the same subcommittee of the Appropriations Committee of the Senate; and (2) to an account with an outlay rate no greater than the account from which the funds were transferred.

(d) Thirty days prior to the provision of any assistance under this section the President shall transmit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives a report setting forth the assistance to be provided, the specific accounts from which such assistance is to be provided and the amounts to be provided from each account.

HATFIELD (AND OTHERS) AMENDMENT NO. 3204

Mr. JOHNSTON (for Mr. HATFIELD, for himself, Mr. STENNIS, Mr. STEVENS, Mr. BYRD, Mr. WEICKER, Mr. INOUYE, Mr. MCCLURE, Mr. HOLLINGS, Mr. LAXALT, Mr. JOHNSTON, Mr. COCHRAN, Mr. BURDICK, Mr. ANDREWS, Mr. LEAHY, Mr. ABDNOR, Mr. DECONCINI, Mr. KASTEN, Mr. BUMPERS, Mr. D'AMATO, Mr. LAUTENBERG, Mr. MATTINGLY, Mr. RUDMAN, Mr. SPECTER, Mr. DOMENICI, Mr. CHILES, Mr. SASSER, and Mr. HARKIN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

TITLE II

OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

CHAPTER I

DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount for "Salaries and expenses, United States attorneys", $6,000,000.

SUPPORT OF UNITED STATES PRISONERS

For an additional amount for support of United States prisoners in non-Federal institutions, $2,000,000.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524, as amended by the Comprehensive Forfeiture Act of 1984 and the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, such sums as may be necessary to be derived from the Department of Justice Assets Forfeiture Fund.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $4,000,000.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $18,000,000.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $28,000,000.

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and facilities", $50,000,000, to remain available until expended.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For an additional amount for "Justice assistance", $117,000,000, to remain available until expended, for grants for drug law enforcement programs, to be used only to carry out provisions of section 1302 (1), (2), (3), (5), and (6), of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by H.R. 5484, as passed in the Senate on September 30, 1986: *Provided*, That $2,000,000 shall be available only to carry out a pilot prison capacity program.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

DEFENDER SERVICES

For an additional amount for "Defender services", $18,000,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For an additional amount for "Fees of jurors and commissioners", $7,500,000, to remain available until expended.

RELATED AGENCY

UNITED STATES INFORMATION AGENCY

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $2,000,000, to be available only for drug education programs abroad authorized in H.R. 5484 as passed in the Senate on September 30, 1986.

CHAPTER II

FOREIGN ASSISTANCE

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

Education and human resources development, Development Assistance:

For an additional amount to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, $3,000,000: *Provided*, That these funds shall be used pursuant to section 126(b)(2) of the Foreign Assistance Act of 1961 for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

For an additional amount to carry out the provisions of section 481 of the Foreign Assistance Act of 1961, $55,000,000: *Provided*, That of this amount $45,000,000 shall be made available only in accordance with the provisions of section 2001(2) of H.R. 5484, as passed in the Senate on September 30, 1986: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

CHAPTER III

DEPARTMENT OF INTERIOR

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for "Operation of Indian programs", $3,500,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

CONSTRUCTION

For an additional amount for "Construction", $15,000,000, to remain available until expended.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

NATIONAL FOREST SYSTEM

For an additional amount for "National forest system", $20,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH SERVICES AND RESOURCES ADMINISTRATION

INDIAN HEALTH SERVICES

For an additional amount for "Indian health services," $16,200,000: *Provided*, That funds made available to tribes and tribal organizations through grants or contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

INDIAN HEALTH FACILITIES

For an additional amount for "Indian health facilities", $9,000,000, to remain available until expended.

CHAPTER IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT

For an additional amount for drug abuse prevention and treatment activities as authorized by title XIX of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, $236,000,000, of which $11,000,000 shall be transferred to the Administrator of Veterans Affairs to be used in accordance with section 1922 of the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986.

NATIONAL INSTITUTE FOR DRUG ABUSE

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $27,000,000.

NATIONAL INSTITUTE FOR ALCOHOL ABUSE AND ALCOHOLISM

RESEARCH

For an additional amount for "Research", as authorized by title V of the Public Health Service Act, as amended by the Anti-Drug Abuse Act of 1986, as passed in the Senate on September 30, 1986, $3,000,000.

INFORMATION CLEARINGHOUSE AND EVALUATION STUDIES

For an additional amount for "Information clearinghouse and evaluation studies", $3,000,000.

DEPARTMENT OF EDUCATION

SPECIAL PROGRAMS

For an additional amount for "Special programs", $150,000,000, to remain available until September 30, 1988: *Provided*, That the remaining funds shall be distributed in accordance with subtitle B of the Anti-Drug Abuse Act of 1986.

RELATED AGENCY

ACTION

OPERATING EXPENSES

For an additional amount for public awareness and education as authorized by the Domestic Volunteer Service Act of 1973, part C of title I, as amended by the Anti-Drug Abuse Act of 1986, $3,000,000, of which $500,000 shall be available for administration, as authorized in title IV of the Domestic Volunteer Service Act of 1973, as amended.

CHAPTER V

DEPARTMENT OF TRANSPORTATION

COAST GUARD

OPERATING EXPENSES

For an additional amount for "Operating expenses", $39,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction, and improvements", $119,000,000, to remain available until September 30, 1991, of which not to exceed $5,000,000, may be expended for design and engineering work in relation to construction of a docking facility in the Bahamas.

FEDERAL HIGHWAY ADMINISTRATION

MOTOR CARRIER SAFETY GRANTS

(HIGHWAY TRUST FUND)

For an additional amount to carry out the provisions of section 402 of Public Law 97-424, $30,000,000, to be derived from the Highway Trust Fund, to remain available until September 30, 1989.

CHAPTER VI

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $65,900,000.

OPERATION AND MAINTENANCE, AIR INTERDICTION PROGRAM

For an additional amount for "Operation and maintenance, Air Interdiction program", $85,000,000, of which up to $10,000,000 is available for the U.S.-Bahamas Task Force and $25,000,000 is available for establishment of command, control, communications, and intelligence (C-3I) centers, to remain available until expended.

U.S. SECRET SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $5,000,000.

EXECUTIVE OFFICE OF THE PRESIDENT

WHITE HOUSE CONFERENCE ON DRUG ABUSE AND CONTROL

SALARIES AND EXPENSES

For necessary expenses of the White House Conference on Drug Abuse and Control, $2,000,000.

CHAPTER VII

DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and maintenance, Air Force", $12,615,000.

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

For an additional amount for "Operation and maintenance, Defense agencies", $27,000,000.

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For an additional amount for "Aircraft procurement, Army", $22,500,000.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for "Aircraft procurement, Navy", $183,000,000.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for "Other procurement, Air Force", $117,000,000.

This title may be cited as the "Omnibus Drug Supplemental Appropriations Act of 1987".

71-059 O-87-11 (Pt. 20)

HECHT (AND METZENBAUM) AMENDMENT NO. 3205

Mr. JOHNSTON (for Mr. HECHT, for himself and Mr. METZENBAUM) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

The bill is amended by adding at the appropriate place two new sections as follows:

"SEC. .

The primary term of any geothermal lease in effect as of July 27, 1984, issued pursuant to the Geothermal Act of 1970 (Public Law 91-581, 84 Stat. 1566, 30 U.S.C. 1001-1025) is hereby extended to December 31, 1988, if the Secretary of the Interior finds that—

(a) a bona fide sale of the geothermal resource, from a well capable of production, for delivery to or utilization by a facility or facilities, has not been completed (1) due to administrative delays by government entities, beyond the control of the lessee, or (2) such sale would be uneconomic;

(b) substantial investment in the development of or for the benefit of the lease has been made; and

(c) the lease would otherwise expire prior to December 31, 1988.

SEC. . PROTECTION FOR UNITS OF THE NATIONAL PARK SYSTEM.

(a) The Secretary of the Interior (hereinafter in this section referred to as "the Secretary" shall publish for public comment in the Federal Register within 120 days after the date of enactment of this section a proposed list of significant thermal features within the following units of the National Park System:

Mount Rainier National Park;
Lassen Volcanic National Park;
Yellowstone National Park;
Bering Land Bridge National Preserve:
Gates of the Arctic National Park and Preserve;
Yukon-Charley Rivers National Preserve;
Katmai National Park;
Aniakchak National Monument and Preserve;
Wrangell-St. Elias National Park and Preserve;
Glacier Bay National Park and Preserve;
Denali National Park and Preserve;
Lake Clark National Park and Preserve;
Hot Springs National Park;
Sequoia National Park;
Hawaii Volcanoes National Park;
Lake Mead National Recreation Area;
Big Bend National Park;
Olympia National Park
Grand Teton National Park;
John. D. Rockefeller, Jr. Memorial Parkway;
Haleakala National Park; and
Crater Lake National Park;

The Secretary shall include with such list the basis for his determination with respect to each thermal feature on the list. Based on public comment on such list, the Secretary is authorized to make additions to or deletions from the list. Not later than the 60th day from the date on which the proposed list was published in the Federal Register, the Secretary shall transmit the list to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives together with copies of all public comments which he has received and indicating any additions to or deletions from the list with a statement of the reasons therefore and the basis for inclusion of each thermal feature on the list. The Secretary shall consider the following criteria in determining the significance of thermal features:

(1) size, extent, and uniqueness;

(2) scientific and geologic significance;

(3) the extent to which such features remain in a natural, undisturbed condition; and

(4) significance of thermal features to the authorized purposes for which the National Park System unit was created.

The Secretary shall not issue any geothermal lease pursuant to the Geothermal Steam Act of 1970 (Pub. L. 91-581, 84 Stat. 1566), as amended, until such time as the Secretary has transmitted the list to the Committees of Congress as provided in this section.

(b) The Secretary shall maintain a monitoring program for those significant thermal features listed pursuant to subsection (a) of this section.

(c) Upon receipt of an application for a geothermal lease the Secretary shall determine on the basis of scientific evidence if exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section. Such determination shall be subject to notice and public comment. If the Secretary determines on the basis of scientific evidence that the exploration, development, or utilization of the land subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section, the Secretary shall not issue such geothermal lease. In addition, the Secretary shall withdraw from leasing under the Geothermal Steam Act of 1970, as amended, those lands, or portion thereof, subject to the application for geothermal lease, the exploration, development, or utilization of which is reasonably likely to result, based on the Secretary's determination, in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section.

(d) With respect to all geothermal leases issued after the date of enactment of this section the Secretary shall include stipulations in leases necessary to protect significant thermal features listed pursuant to subsection (a) of this section where a determination is made based on scientific evidence that the exploration, development, or utilization of the lands subject to the lease is reasonably likely to adversely affect such significant thermal features. Such stipulations shall include, but are not limited to:

(1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;

(2) requiring the lessee to report annually to the Secretary on its activities;

(3) requiring the lessee to continuously monitor geothermal production and injection wells; and

(4) requiring the lessee to suspend activity, temporarily or permanently, on the lease if the Secretary determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features listed pursuant to subsection (a) of this section until such time as the significant adverse effect is eliminted.

(e) The Secretary of Agriculture shall consider the effects on significant thermal features of those units of the National Park System identified in subsection (a) of this section in determining whether to consent to leasing under the Geothermal Steam Act of 1970, as amended, on national forest or other lands administered by the Department of Agriculture available for leasing under the Geothermal Steam Act of 1970, as amended, including public, withdrawn, and acquired lands.

(f) Nothing contained in this section shall affect the ban on leasing under the Geothermal Steam Act of 1970, as amended, with respect to the Island Park Known Geothermal Resources Area, as provided for in Public Law 98-473 (98 Stat. 1837) and Public Law 99-190 (99 Stat. 1267).

(g) Except as provided herein, nothing contained in this section shall affect or modify the authorities or responsibilities of the Secretary under the Geothermal Steam Act of 1970, as amended, by any other provision of law.

(h) The provisions of this section shall remain in effect until Congress detemines otherwise.

KASSEBAUM (AND OTHERS) AMENDMENT NO. 3206

Mr. JOHNSTON (for Mrs. KASSEBAUM, for herself, Mr. LUGAR, Mr. PELL, Mr. ABDNOR, and Mr. KERRY) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) The Congress finds that the activities conducted under the authorities of the Foreign Assistance Act of 1961 have contributed greatly to the alleviation of human suffering and the promotion of economic development in the recipient countries. The Congress finds further that changing circumstances in the developing countries and changing availability of resources from the United States require that a comprehensive review of the activities under that Act be undertaken.

(b) It is, therefore, the sense of the Congress that the President should undertake a comprehensive review of the activities authorized by the Foreign Assistance Act of 1961 and should send to the Senate Foreign Relations Committee and the House Foreign Affairs Committee by February 1, 1987, his recommendations for amending the Act or otherwise modifying those activities.

INOUYE AMENDMENT NO. 3207

Mr. JOHNSTON (for Mr. INOUYE) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

Insert at the appropriate place:

SECTION . MEMBERSHIP OF HEALTH CARE PROFESSIONALS ON COMMISSION

(a) Section 502(a) of title 21 of the District of Columbia Code is amended by striking out the last sentence and inserting in lieu thereof "Eight of the members of the Commission shall be health care professionals who are psychiatrists, or doctoral level psychologists, practicing in the District of Columbia who have had not less than five years' experience in the treatment of mental illnesses.".

SERVICE OF HEALTH CARE PROFESSIONALS

(b) Section 502(c) of title 21 of the District of Columbia Code is amended to read as follows:

"(c) Members of the Commission who are health care professionals shall serve on a

part-time basis and shall be rotated by assignment of the Chief Judge of the court, so that at any one time the Commission shall consist of the chairman and two members who are health care professionals. Members of the Commission who are health care professionals may practice their profession during their tenure of office, but may not participate in the disposition of a case in which they have rendered professional service or advice.".

TRANSITION PROVISIONS

(c) The members of the District of Columbia Commission on Mental Health on the date of the enactment of this Act shall serve the unexpired portions of their terms as members of such commission.

EFFECTIVE DATE

(d) The provisions of this Act shall take effect on the date of enactment.

PRYOR AMENDMENT NO. 3208

Mr. JOHNSTON (for Mr. PRYOR) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

Insert at the appropriate place: The Administrator of the Environmental Protection Agency shall enter into a cooperative enforcement agreement under section 28 and related sections of the Toxic Substances Control Act with the State of Arkansas. Such agreement shall include provisions providing for the presence of a state inspector on site during hours of operation to insure compliance with all applicable PCB regulations, including permit conditions, at the Ensco Incinerator in El Dorado, Arkansas.

McCLURE (AND OTHERS) AMENDMENTS NO. 3209

Mr. JOHNSTON (for Mr. MCCLURE, for himself, Mr. BYRD, Mr. METZENBAUM, Mr. ROCKEFELLER, Mr. GORE, and Mr. MURKOWSKI) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

At the appropriate place in H. Res. 738, insert the following new section:

SECTION . (a) Section 1102(a) of the National Parks and Recreation Act of 1978 (Public Law 95-625) is amended by inserting the following after the second sentence: "In addition, the Secretary may acquire by any of the foregoing methods not to exceed ten acres outside the boundaries of the national river for an administrative headquarters site, and funds appropriated for land acquisition shall be available for the acquisition of the administrative headquarters site.".

(b) Section 1112 of Public Law 95-625 is amended by striking "$500,000" and inserting "$3,000,000".

(c) The Congress finds that—

(1) certain developed and productive desert land entries in Idaho, identified in subsection (d) of this section, made pursuant to the Act entitled "An Act to provide for the sale of desert lands in certain States and Territories", approved March 3, 1877 (43 U.S.C. 321, et seq.), commonly known and hereinafter referred to as the "Desert Land Act", have been cancelled by the Secretary of the Interior pursuant to holding limitation regulations promulgated pursuant to section 7 of the Act (43 U.S.C. 329);

(2) such regulations were retroactively applied to such desert land entries several years after the entries were allowed and more than two years after final development, proof and final payment for such entries were made, without giving the entrymen any opportunity to comply with the new interpretation of such regulations;

(3) cancellation of such desert land entries was harsh and unfair, and resulted in forfeiture to the Government of the developed entries and the monies paid for the land;

(4) such entrymen have fulfilled the requirements of the Desert Land Act in all respects other than such holding limitation regulations; and

(5) such entrymen, or their heirs or devisees, should have the entries reinstated and qualify for issuance of patents to carry out the objectives of the Desert Land Act.

(d) The names of the entrymen, and the serial numbers of the desert land entries generally known as the "Sailor Creek Project", to which this Act applies, are as follows:

Entryman	Bureau of Land Management Serial Number
G. Patrick Morris	Idaho 013820
John E. Roth	Idaho 013905
Elise L. Neeley	Idaho 013906
Lyle D. Roth	Idaho 013907
Vera M. Noble (Now Baltzor)	Idaho 014126
Charlene S. Baltzor	Idaho 014128
George R. Baltzor	Idaho 014129
John E. Morris (deceased)	Idaho 014130
Juanita M. Morris	Idaho 014249
Nellie Mae Morris (deceased)	Idaho 014250
Milo Axelsen	Idaho 014251
Peggy Axelsen	Idaho 014252

(e)(1) The desert land entries identified in subsection (d) of this Act are hereby reinstated. The entrymen, or the heirs or devisees of any deceased entryman, may—

(A) rescind any agreement which is prohibited by the Secretary of the Interior pursuant to regulations under section 7 of the Act (43 U.S.C. 329) within six months after the date of enactment of this Act; and

(B) resubmit final proof of reclamation and cultivation of the land in accordance with the provisions of section 7 of the Act (43 U.S.C. 329) before December 31, 1988.

(2) The Secretary of the Interior shall issue patents to the entrymen named in subsection (d), or their heirs or devisees upon compliance with the provisions of subsection (e)(1) and the submission of satisfactory final proof.

(f) Notwithstanding any other provisions of law, the property right prior to issuance of a patent to the land of any entryman identified in subsection (d) of this section, or the heirs or devisees of any such entryman whose entry is reinstated in accordance with subsection (e) of this section, shall be a personal right, inheritable but not assignable. Any such entry may be mortgaged in the manner permitted by regulations promulgated by the Secretary of the Interior for the purpose of securing repayment of monies borrowed for development of the entry or for farm operating or crop production expenses.

(g)(1) The Women in Military Service for America Memorial Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the Senate on September 10, 1986 (S. Rept. 99-421).

(2) The organization or organizations approved by the Secretary shall establish the memorial with non-Federal funds.

(h)(1) The Black Revolutionary War Patriots Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the House of Representatives on September 29, 1986.

(2) The Black Revolutionary War Patriots Foundation shall establish the memorial with non-Federal funds.

McCLURE (AND OTHERS) AMENDMENT NO. 3210

Mr. JOHNSTON (for Mr. WARNER) (for himself, and Mr. BYRD) proposed an amendment to the joint resolution (H.J. Res. 738), supra, as follows:

Insert at the appropriate place:

Notwithstanding any legislative or judicial requirement, the Office of Surface Mining Reclamation and Enforcement may delay the finalization of the proposed rulemaking amending Parts 773 and 778 of the Code of Federal Regulations as published in the Federal Register on April 5, 1985 (50 FR13724) until March 31, 1987.

REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

METZENBAUM (AND OTHERS) AMENDMENT NO. 3211

Mr. BYRD (for Mr. METZENBAUM, Mr. THURMOND, Mr. HEINZ, Mr. GLENN, Mr. SPECTER, Mr. DENTON, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, Mr. ROCKEFELLER, and Mr. BOSCHWITZ) proposed an amendment to the bill (H.R. 5490) to amend title 11, United States Code, to clarify the current meaning of section 1113 relating to the rejection of collective-bargaining agreements by debtors in bankruptcy; as follows:

Strike everything after the enacting clause and insert in lieu thereof the following:

SEC. 1. Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987, to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

SEC. 2. This Act is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases under which an order for relief is en-

tered under chapter 11 of title 11, United States Code, after October 2, 1986, while such case is a case under chapter 11.

PROCESS PATENT AMENDMENTS ACT

MATHIAS AMENDMENT NO. 3212

Mr. STEVENS (for Mr. MATHIAS) proposed an amendment to the bill (H.R. 4899) to amend title 35, United States Code, with respect to patented processes and the patent cooperation treaty; as follows:

Strike out all of title I and insert in lieu thereof the following:

TITLE I—PATENTED PROCESSES

SEC. 101. This title may be cited as the "Process Patent Amendments Act of 1986".

SEC. 102. (a) Section 154 of title 35, United States Code, is amended by inserting after "United States," the following: "and, if the invention is a process, of the right to exclude others, to the extent provided in section 271(a)(2), from using or selling products produced thereby throughout the United States, or importing products produced thereby into the United States,".

(b) Section 271 of title 35, United States Code, is amended by—

(1) inserting "(1)" after "(a)";

(2) adding at the end of subsection (a), the following:

"(2) If the patented invention is a process, whoever without authority uses or sells within, or imports into, the United States during the term of the patent therefor a product produced by such process, infringes the patent. A product will no longer be considered to have been produced by a patented process once it has been materially changed by subsequent steps or processes.".

(c) Section 287 of title 35, United States Code, is amended by—

(1) striking out "Limitation on damages" in the section heading and inserting in lieu thereof "Limitation on damages and other remedies";

(2) inserting "(a)" before "Patentees,"; and

(3) adding at the end thereof the following new subsection:

"(b)(1) An infringer under section 271(a)(2) shall be subject to all of the provisions relating to damages and injunctions set forth in this title except to the extent that those remedies are limited by this subsection or section 3. The limitations on remedies set forth in this subsection shall not be available to any party who—

"(A) engaged in the actual practice of the patented process;

"(B) is owned or controlled by the party who engaged in the actual practice of the patented process;

"(C) owns or controls the party who engaged in the actual practice of the patented process;

"(D) having made a request for disclosure as provided in subsection (b)(5), fails to notify its supplier of patents identified in response to the request and to instruct its supplier to refrain from infringement of such patents; or

"(E) had knowledge prior to the infringement that a patented process was used to produce the product whose importation, use, or sale constituted the infringement.

"(2) No damages shall be recovered by the patentee unless the infringer had notice of the infringement and continued to infringe thereafter. Damages may be recovered only for infringement that occurred after notice of infringement.

"(3) No remedy may be obtained during the eighteen months after the date of notice for retail sales of a normal volume of products in inventory or on order at the time of notice, obtained from a party in the United States who did not use the patented process, provided the retailer discloses to the patentee, within 30 days from notice, the identity and location of the party from whom the products were purchased. Normal quantity of products in inventory and on order shall be determined by previous business practices, and could include units of a product ordered prior to notice and received within a period not to exceed eighteen months after notice.

"(4) The remedy for the importation, use, or sale of units of the infringing product ordered prior to notice and imported, used, or sold in a manner consistent with the normal business practices of the infringer during the six months after the date of notice shall be limited to a reasonable royalty. The limitation in this subparagraph shall not be available to any party who failed to make a request for disclosure, as defined in subparagraph (5), of the party asserting infringement or its licensee.

"(5)(A) For purposes of this paragraph, a 'request for disclosure' means a written request made to a party then engaged in the manufacture of a product to identify all process patents owned by or licensed to that party as of the time of the request that could reasonably be asserted to be infringed under section 271(a)(2) if that product were imported into, or sold or used in, the United States by an unauthorized party. A request for disclosure is further limited to a request—

"(i) made by a party regularly engaged in the sale of the same type of products as the party to whom the request is directed, or a request which includes facts showing that the requester plans to engage in the sale of such products; and

"(ii) made prior to such party's first importation, use, or sale of units of the product produced by an infringing process and prior to notice of infringement.

"(B) In any action where the infringer made a request for disclosure from the party asserting infringement and the infringed patent was not identified within 60 days, the remedy for the importation, use, or sale of units of the infringing product which are imported, used, or sold by the infringer in a manner consistent with the normal business practices of the infringer during the eighteen months after the date of notice shall be limited to a reasonable royalty.

"(C) For the purposes of the limitations on remedies in this subsection—

"(i) no party may make more than one request for disclosure of the same party for the identification of process patents for producing a particular product; and

"(ii) no party who has received the benefit of the limitations of this paragraph or paragraph (4) with respect to the infringement of one process patent shall be entitled to that benefit in the event of a subsequent infringement of any process patent for producing the same product owned by the same patentholder at the time of the first infringement.

"(6) For the purposes of the remedy limitations in subsection (b), notice of infringement means actual knowledge, or receipt of notification, that a product was produced by a patented process without authorization of the patentee. A notification shall constitute notice of infringement only if it is in writing and sets forth facts which are sufficient to establish that there is a substantial likelihood that the product was made by the infringing process. Filing an action for infringement shall constitute notice of infringement only if the pleadings or other papers filed in the action meet the requirements of a notification.".

(d) The table of sections for chapter 29 of title 35, United States Code, is amended by amending the item relating to section 287 to read as follows:

"287. Limitations on damages and other remedies; marking and notice.".

SEC. 103. (a) This title and the amendments made by this title shall apply only to products produced or imported after the date of enactment, and shall not abridge or affect the right of any persons or their successors in business to continue to use, sell or import any specific product already in substantial and continuous sale or use in the United States on July 1, 1986, or for which substantial preparation for such sale or use was made before such date, to the extent equitable for the protection of commercial investments made or business commenced in the United States before such date.

(b) This title and the amendments made by this title shall not deprive a patent owner of any other remedies available under section 271 of title 35, United States Code, section 337 of the Tariff Act of 1930, or any other provision of law.

SEC. 104. Beginning on the date one year after the date of enactment of this title and each year for 4 additional years thereafter, the Department of Commerce shall submit an annual report to the Congress on the effect of this title and the amendments made by this title, on the importation of ingredients to be used for manufacturing products in the United States in those domestic industries that submit formal complaints to the Department alleging that their legitimate sources of supply have been adversely affected.

SEC. 105. (a) Chapter 29 of title 35, United States Code, is amended by adding at the end thereof the following:

"§ 295. Presumption: product produced by patented process

"In actions alleging infringement of a process patent based on use, sale, or importation of a product produced by the patented process, if the court finds (1) that a substantial likelihood exists that the product was produced by the patented process and (2) that the claimant has made a reasonable effort to determine the process actually used in the production of the product and was unable so to determine, the product shall be presumed to have been so produced, and the burden of establishing that the product was not produced by the process shall be on the party asserting that it was not so produced.".

(b) The table of sections for chapter 29 of title 35, United States Code, is amended by adding after the item relating to section 294 the following:

"295. Presumption: product produced by patented process.".

COMPUTER FRAUD AND ABUSE ACT OF 1986

TRIBLE AMENDMENT NO. 3213

Mr. STEVENS (for Mr. TRIBLE) proposed an amendment to the bill (H.R. 4718) 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, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),";

(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18; and

(4) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of title 15,".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Code, is amended—

(1) to read as follows:

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, access such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;"; and

(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.".

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECT OF OFFENSES.—Paragraph (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains any thing of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

"(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

"(A) causes loss to one or more others of a value aggregating $1,000 or more during anyone year period; or

"(B) modifies or impairs, or potentially modifies or impairs. the medical examination, medical diagnosis, medical treatment, or medical care of one or more individual; or

"(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

"(A) such trafficking affects interstate or foreign commerce; or

"(B) such computer is used by or for the Government of the United States;".

(e) ELIMINATION OF SECTION SPECIFIC CONSPIRACY OFFENSE.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(f) PENALTY AMENDMENTS.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out "of not more than the greater of $10,000" in subsection (c)(1)(A) and inserting "under this title" in lieu thereof;

(2) by striking out "of not more than the greater of $10,000" and all that follows through "obtained by the offense" in subsection (c)(1)(B) and inserting "under this title" in lieu thereof;

(3) by striking out "or (a)(3)" each place it appears in subsection (c)(2) and inserting ", (a)(3) or (a)(6)" in lieu thereof;

(4) by striking out "of not more than the greater of $5,000" and all that follows through "created by the offense" in subsection (c)(2)(A) and inserting "under this title" in lieu thereof;

(5) by striking out "of not more than the greater of $10,000" and all that follows through "created by the offense" in subsection (c)(2)(B) and inserting "under this title" in lieu thereof;

(6) by striking out "not than" in subsection (c)(2)(B) and inserting "not more than" in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting "; and" in lieu thereof;

(8) by adding at the end of subsection (c) the following:

"(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this paragraph."; and

(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)".

(g) CONFORMING AMENDMENTS TO DEFINITIONS PROVISION.—Section1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after "As used in this section" and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting "(1)" before "the term";

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

"(2) the term 'Federal interest computer' means a computer—

"(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

"(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

"(4) the term 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

"(H) the Securities Investor Protection Corporation;

"(5) the term 'financial record' means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

"(6) the term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter; and

"(7) the term 'department of the United States' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.".

(h) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITY EXCEPTION.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

PENALTIES FOR FALSE CLAIMS

GRASSLEY AMENDMENT NO. 3214

Mr. STEVENS (for Mr. GRASSLEY) proposed an amendment to the bill (S. 1562) to amend the False Claims Act, and title 18 of the United States Code

regarding penalties for false claims, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the Armed Forces of the United States";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the Armed Forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendent first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty of damages.

"(b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

"(c) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(d) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.".

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the 60-day period of any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

"(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

"(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

"(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

"(i) limiting the number of witnesses the person may call;

"(ii) limiting the length of the testimony of such witnesses;

"(iii) limiting the person's cross-examination of witnesses; or

"(iv) otherwise limiting the participation by the person in the litigation.

"(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

"(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim

through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(B) For purposes of this paragraph, 'senior executive branch official' means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.)

"(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

"(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

"(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.".

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an aciton filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.".

SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express

demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executing copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OR SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTIVE OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or person responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

"(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcrips of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case of proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any

Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian, from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(l) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A).".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.
"3733. Civil investigative demands.".

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "fined" and all that follows through "both" and inserting "imprisoned not more than five years and shall

be subject to a fine in the amount provided in this title".

DISTRICT OF COLUMBIA JUDICIAL SYSTEM ACT

MATHIAS AMENDMENT NO. 3215

Mr. STEVENS (for Mr. MATHIAS) proposed an amendment to the bill (H.R. 3578) to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes; as follows:

Section 1732(m)(1) of title 11 of the District of Columbia Code (as amended by section 2(a) of the committee substitute) is amended in the matter before clause (A) by inserting after "District of Columbia Bar" the following: ", the City Council of the District of Columbia,".

Section 1703(c) of title 11 of the District of Columbia Code (as added by section 3(3) of the committee substitute) is amended by striking "90 days" and inserting "180 days".

Section 14 of the committee substitute is amended to read as follows:

SEC. 14. SERVICES OF RETIRED JUDGES.

(a) SENIOR JUDGES.—The second sentence of section 1504(a)(1) of title 11, District of Columbia Code, is amended by striking "every two years" and inserting "every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years,".

(b) REQUEST FOR SENIOR JUDGESHIP.—Section 1504(a) of title 11, District of Columbia Code, is further amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the 'Commission') to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission."

(c) SERVICE BY RETIRED JUDGES.—Section 1565 of title 11, District of Columbia Code, is amended to read as follows: "11-1565. Service by Retired Judges.

"Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity.".

The committee substitute is amended by redesignating section 17 as section 18 and by adding after section 16 the following new section:

SEC. 17. CHIEF JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AS PRESIDING OFFICER OF THE PUBLIC DEFENDER SERVICE.

Section 330 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358; 1-2703, D.C. Code) is amended—

(1) by striking out clause (A) of subsection (b)(1) and redesignating clauses (B), (C), (D), and (E) as clauses (A), (B), (C), and (D), respectively; and

(2) in paragraph (2) of subsection (b) by striking out "Chief Judge of the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Chief Judge of the District of Columbia Court of Appeals".

NATIONAL BUREAU OF STANDARDS AUTHORIZATION ACT

GORTON AMENDMENT NO. 3216

Mr. STEVENS (for Mr. GORTON) proposed an amendment to the bill (H.R. 4354) to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1987, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "National Bureau of Standards Authorization Act for Fiscal Year 1987".

AUTHORIZATION FOR PROGRAM ACTIVITIES

SEC. 2. (a) There are authorized to be appropriated to the Secretary of Commerce (hereinafter referred to as the "Secretary") for fiscal year 1987, to carry out the activities performed by the National Bureau of Standards, the sums set forth in the following line items:

(1) Measurement Research and Standards, $36,582,000;

(2) Materials Science and Engineering, $21,228,000;

(3) Engineering Measurements and Standards, $35,875,000;

(4) Computer Science and Technology, $7,500,000; and

(5) Research Support Activities, $22,768,000.

(b) Notwithstanding any other provision of this or any other Act—

(1) of the amounts authorized under subsection (a), $1,900,000 is authorized only for steel technology;

(2) of the amount authorized under paragraph (3) of subsection (a), $3,470,000 is authorized only for the Center for Building Technology and $5,402,000 is authorized only for the Center for Fire Research;

(3) of the amount authorized under paragraph (4) of subsection (a), $1,000,000 is authorized only for Computer Security Activities;

(4) of the amount authorized under paragraph (5) of subsection (a), $6,763,000 is authorized only for the Technical Competence Fund; and

(5) of the amount authorized under paragraph (5) of subsection (a), $6,500,000 is authorized only for the design, equipment, and construction fo the Cold Neutron Research Facility.

(c)(1) Funds may be transferred among the line items listed in subsection (a) so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in each subsection.

(2) In addition, the Secretary may propose transfers to or from any line item exceeding 10 percent of the amount authorized for that line item in subsection (a); but a full and complete explanation of any such proposed transfer and the reason therefor must be transmitted in writing to the Speaker of the House of Representatives, the President of the Senate, and the appropriate authorizing committees of the House of Representatives and the Senate, and the proposed transfer may be made only when thirty calendar days have passed after the transmission of such written explanation.

(d) The National Bureau of Standards shall seek reimbursements of not less than $500,000 from other Federal agencies to expand its efforts in support of basic scientific research on the atmospheric, climatic, and environmental consequences of nuclear explosions and nuclear exchanges.

OFFICE OF PRODUCTIVITY, TECHNOLOGY, AND INNOVATION

SEC. 3. In addition to the sums authorized by section 2, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $2,248,000 for the activities of the Office of Productivity, Technology, and Innovation.

NATIONAL TECHNICAL INFORMATION SERVICE

SEC. 4. In addition to the sums authorized by sections 2 and 3, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $500,000 for the patent licensing activities of the National Technical Information Service.

AVAILABILITY OF APPROPRIATIONS

SEC. 5. Appropriations made under the authority provided in this Act shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making such appropriations.

FINANCIAL ASSISTANCE TO CURRENT AND PROSPECTIVE EMPLOYEES

SEC. 6. (a) In order to secure the services of the broadest possible range of talent in carrying out the programs of the National Bureau of Standards, the Act of March 3, 1901 (15 U.S.C. 271-278h) is amended by redesignating section 18 as section 19 and by inserting after section 17 the following new section:

SEC. 18. The Director is authorized to expend up to 1 per centum of the funds appropriated for activities of the National Bureau of Standards in any fiscal year, as the Director may deem desirable, for awards of research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Bureau. The selection of persons to receive such fellowships and assistance shall be made on the basis of ability and of the relevance of the proposed work to the mission and programs of the Bureau.".

(b) The amendments made by subsection (a) shall be effective October 1, 1986.

ASSESSMENT OF EMERGING TECHNOLOGIES REQUIRING RESEARCH IN METROLOGY

SEC. 7. The Board of Assessment of the National Bureau of Standards programs shall include, as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Bureau abreast of its mission, including (but not limited to) Process and Quality Control, Technology Transfer, Engineering Databases, High-Performance Composites, Advanced Ceramics, Fiber Optics, Microwave Metrology, Bioprocess Engineering, and Advanced Computing Concepts. Such review shall include estimates of the cost of the required effort, the required staffing level, and the period over which the research will be required.

POST-DOCTORAL FELLOWSHIP PROGRAM

SEC. 8. (a) The Act of March 3, 1901 (15 U.S.C. 271-271h), as amended by section 6 of this Act, is further amended by redesignating section 19 as section 20 and by inserting after section 18 the following new section:

"SEC. 19. The National Bureau of Standards, in conjunction with the National Academy of Sciences, shall establish and conduct a post-doctoral fellowship program which shall be organized and carried out in substantially the same manner as the National Academy of Sciences/National Research Council Post-Doctoral Research Associate Program that was in effect prior to 1986, and which shall include not less than twenty nor more than forty new fellows per fiscal year.".

(b) The amendments made by subsection (a) shall be effective October 1, 1987.

PROCESS AND QUALITY CONTROL AND CALIBRATION PROGRAMS

SEC. 9. (a) The Director of the National Bureau of Standards shall hold discussions with representatives of Federal agencies, including the Department of Defense, the Department of Energy, the National Aeronautics and Space Administration, the Federal Aviation Administration, the National Institutes of Health, the Nuclear Regulatory Commission, and the Federal Communications Commission, which use (or the contractors of which depend on) the process and quality control and calibration programs of the Bureau, and with companies, organizations, and major engineering societies from the private sector, in order to determine the extent of the demand for research and services under such programs, the appropriate methods of paying for research and services under such programs, and the willingness of Federal agencies and the private sector to pay for such research and services.

(b) Within six months after the date of the enactment of this Act, the Director shall submit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report of the Director's findings based on the discussions held under subsection (a), together with recommendations for such legislative actions as may be needed to implement a comprehensive Federal process and quality control and calibration program.

DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT

SEC. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) the rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph 3)) within which such position has been placed;

(2) the minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) employees shall be evaluated under a performance appraisal system which—

(A) uses peer comparison and ranking wherever appropriate; and

(B) affords appeal rights comparable to those afforded under chapter 43 of title 5, United States Code;

(5)(A) the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances (but shall not be considered a part of basic pay);

(8) there shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) the methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) basic pay;

(B) bonuses;

(C) allowances;

(D) retirement benefits;

(E) health insurance benefits;

(F) life insurance benefits; and

(G) leave benefits.

(2) The Director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) shall include findings as to—

(i) the extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(ii) with respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) the percentage recommended; or

(ii) the overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) to make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) after making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) the maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) the amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate,

exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6) (A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of a basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) in the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) in the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump-sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) for purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) the Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) the Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

The Comptroller General shall, not later than 4 years after the date of which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

CONSERVATION PROGRAMS ON MILITARY RESERVATIONS

CHAFEE AMENDMENT NO. 3217

Mr. STEVENS (for Mr. CHAFEE, for himself, Mr. STAFFORD, and Mr. MITCHELL) proposed an amendment to the bill (S. 1352) to authorize appropriations to carry out conservation programs on military reservations and public lands during the fiscal years 1986, 1987, and 1988; as follows:

On page 2, after line 4 insert the following:

SEC. 2. NATURAL RESOURCES AND FISH AND WILDLIFE MANAGEMENT ON MILITARY RESERVATIONS; REPORT ON MILITARY EXPENDITURES FOR FISH AND WILDLIFE MANAGEMENT.

(a) NATURAL RESOURCES MANAGEMENT.—The Secretary of each military department shall manage the natural resources of each military reservation within the United States that is under the jurisdiction of the Secretary—

(1) so as to provide for sustained multipurpose uses of those resources; and

(2) to provide the public access that is necessary or appropriate for those uses;

to the extent that those uses and that access are not inconsistent with the military mission of the reservation.

(b) FISH AND WILDLIFE MANAGEMENT SERVICES.—The Secretary of each military department shall ensure, to the extent feasible, that the services necessary for the development, implementation, and enforcement of fish and wildlife management on each military reservation within the United States under the jurisdiction of the Secretary are provided by the Department of Defense personnel who have professional training in those services.

(c) FISH AND WILDLIFE MANAGEMENT REPORT.—The Secretary of each military department shall submit to each House of the Congress, before the close of the 180-day period occurring after the close of fiscal year 1986, a detailed report setting forth the amount and purpose of all expenditures made during fiscal year 1986 for fish and wildlife management on each military reservation in the United States under the jurisdiction of the Secretary.

(d) DEFINITIONS.—As used in this section—

(1) The term "military department" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(2) The term "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 3. SIKES ACT AMENDMENTS.

(a) COOPERATIVE PLANS.—(1) Section 101 of the Act of September 15, 1960 (commonly referred to as the "Sikes Act"; 16 U.S.C. 670a) is amended to read as follows:

"SEC. 101. (a) The Secretary of Defense is authorized to carry out a program of planning for, and the development, maintenance, and coordination of, wildlife, fish, and game conservation and rehabilitation in each military reservation in accordance with a cooperative plan mutually agreed upon by the Secretary of Defense, the Secretary of Interior, and the appropriate State agency designated by the State in which the reservation is located.

"(b) Each cooperative plan entered into under subsection (a)—

"(1) shall provide for—

"(A) fish and wildlife habitat improvements or modifications,

"(B) range rehablitation where necessary for support of wildlife,

"(C) control of off-road vehicle traffic, and

"(D) specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered;

"(2) must be reviewed as to operation and effect by the parties thereto on a regular basis, but not less often than every 5 years;

"(3) shall, if a multiuse natural resources management plan is applicable to the military reservation, be treated as the exclusive component of that management plan with respect to wildlife, fish, and game conservation and rehabilitation; and

"(4) may stipulate the issuance of special State hunting and fishing permits to individuals and require payment of nominal fees therefor, which fees shall be utilized for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities in accordance with the cooperative plan; except that—

"(A) the Commanding Officer of the reservation or persons designated by that Officer are authorized to enforce such special hunting and fishing permits and to collect the fees therefor, acting as agent or agents for the State if the cooperative plan so provides, and

"(B) the fees collected under this paragraph may not be expended with respect to other than the military reservation on which collected.

"(c) After a cooperative plan is agreed to under subsection (a)—

"(1) no sale of land, or forest products from land, that is within a military reservation covered by that plan may be made under section 2665 (a) or (b) of title 10, United States Code; and

"(2) no leasing of land that is within the reservation may be made under section 2667 of such title 10;

unless the effects of that sale or leasing are compatible with the purposes of the plan.

"(d) With regard to the implementation and enforcement of cooperative plans agreed to under subsection (a)—

"(1) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and

"(2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife.

"(e) Cooperative plans agreed to under the authority of this section and section 102 shall not be deemed to be, nor treated as, cooperative agreements to which the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) applies.".

(2) Subsection (d)(1) of such section 101 (as added by paragraph (1)) shall not affect any contract entered into before the date of the enactment of this Act for the provision of services to implement or enforce a cooperative plan under this Act on any military installation; but shall apply to the renewal, after such date of enactment, of any such contract.

(b) FUNDS COLLECTED UNDER PLANS.—Subsection (a) of section 106 of the Sikes Act (16 U.S.C. 670f(a)) is amended by adding at the end thereof the following new sentence: "All funds that are so collected shall remain available until expended.".

SEC. 4. FOREST PRODUCTS ON MILITARY RESERVATIONS.

Section 2665 of title 10, United States Code, is amended as follows:

(1) Subsection (d) is amended—

(A) by striking out "available for operation and maintenance during a fiscal year";

(B) by striking out "expenses" and inserting in lieu thereof "costs"; and

(C) by striking out "during such fiscal year".

(2) Subsection (e)(1) is amended by striking out "for all expenses of production of forest products".

(3) Subsection (f) is amended—

(A) by striking out "expenses" in the matter preceding subparagraph (A) in paragraph (1) and inserting in lieu thereof "cost",

(B) by amending paragraph (1)(C) to read as follows:

"(C) for natural resources management that implements approved plans and agreements.", and

(C) by amending paragraphs (2) and (3) to read as follows:

"(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

"(A) reimbursements of appropriations made under subsection (d), and

"(B) payments made to States under subsection (e).

"(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.".

FEDERAL EMERGENCY MANAGEMENT AGENCY REGULATIONS ACT

STAFFORD AMENDMENT NO. 3218

Mr. STEVENS (for Mr. STAFFORD) proposed an amendment to the bill (H.R. 5488) to prohibit implementation of certain regulations of the Federal Emergency Management Agency relation to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Disaster Relief Act Amendments of 1986".

SEC. 2. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 3. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 4. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and exent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected States, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 5. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 6. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 7. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 8. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 7(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 9. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: *Provided, however,* That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 10. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 7(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistance if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: *Provided,* That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 11. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression.

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law."

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a)

and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 7(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 11(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 7(1) of this Act, is further redesignated as section 314.

Sec. 12. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"Sec. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"Sec. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE"

"Sec. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

Sec. 13. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a

major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided,* That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(c) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area."

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 11(c) and 12 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 12 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 14. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is unavailable, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government."

SEC. 15. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as redesignated by sections 11(c) and 12 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 16. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 11(c) and 12 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 17. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 18. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 19. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 11(c) and 12 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 20. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 21. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 7(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word

appears in section 307 (42 U.S.C. 5150), as redesignated by section 7(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 7(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) stiking "in emergencies or in major disasters" in the third sentence of paragraph (2) by section 12 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 12 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 11(c) and 12 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 22. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and insering in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed by this Act or renumbered by this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 23. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect ninety days after the date of enactment of this Act or on the date on which the President, after consultation with State and local governments, publishes final rules and regulations relating to the definition of costs for which State and local governments may be reimbursed under the Disaster Relief Act of 1974 (as amended by this Act), whichever is later.

(b)(1) This Act and the amendments made by this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to the effective date of this Act.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by section 11(c) and 12 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions had not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"Sec. 421. No State shall be ruled ineligible to receive assistance under this Act solelby by virtue of an arithmetic formula based on income or population."

PROMOTING IMMUNIZATION AND ORAL REHYDRATION

LUGAR AMENDMENT NO. 3219

Mr. STEVENS (for Mr. LUGAR) proposed an amendment to the amendment of the House to the bill (S. 1917) to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes; as follows:

In lieu of the matter proposed by the amendment of the House, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund (UNICEF) reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diphtheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizable diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survival Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed to a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necessary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States, Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $108,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing foreign investment, job creation (especially in the private sector), rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERNMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system;

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti; and

(9) is encouraging private sector development.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States Embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NON-LETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggregate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with those rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objections specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained in section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(6) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime.

This subsection shall be deemed to satisfy the requirements of section 202 of that Act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages or project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United Stated Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

"(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry our section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which

assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for Inernational Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide, subject to obtaining the necessary appropriations, additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

"(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

"(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $21,750,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for that fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

(a) BOARD OF THE INTER-AMERICAN FOUNDATION.—Section 401(g) of the Foreign Assistance Act of 1969 (22 U.S.C.290f.(g)) is amended by striking out "seven" in the first sentence and "Four" in the second sentence and inserting in lieu thereof "nine" and "Six", respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 120 days after the date of enactment of this Act.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), setion 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of that Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Mr. STEVENS. Mr. President, I move that the Senate concur in the amendment of the House to the title of the bill (S. 1917), to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes.

CONSERVATION OF MIGRATORY WATERFOWL

CHAFEE AMENDMENT NO. 3220

Mr. STEVENS (for Mr. CHAFEE, for himself and Mr. MITCHELL) proposed an amendment to the bill (S. 740) to extend until October 1, 1995, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes; as follows:

On page 43, after line 20, insert the following:

SEC. 502. BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE.

(a) PURPOSES OF REFUGE.—The purposes of the Bayou Sauvage Urban National Wildlife Refuge are—

(1) to enhance the populations of migratory shore, and wading birds within the refuge;

(2) to encourage natural diversity of fish and wildlife species within the refuge;

(3) to protect the endangered and threatened species and otherwise to provide for the conservation and management of fish and wildlife within the refuge;

(4) to fulfill the international treaty obligations of the United States respecting fish and wildlife;

(5) to protect the archeological resources of the refuge;

(6) to provide opportunities for scientific research and environmental education, with emphasis being given to the ecological and othe values of wetlands; and

(7) to provide opportunities for fish and wildlife oriented public uses and recreation in an urban setting.

(b) ACQUISITION AND ESTABLISHMENT OF REFUGE.—

(1) ACQUISITION.—Within four years after the effective date of this section the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire the approximately nineteen thousand acres of lands and waters, and interests therein, located in Orleans Parish, Louisiana, that are depicted on the map entitled "Bayou Sauvage Urban National Wildlife Refuge", dated September 15, 1986, and on file at the United States Fish and Wildlife Service, Department of the Interior. The lands and waters, and interests therein, acquired under this paragraph comprise the Bayou Sauvage Urban National Wildlife Refuge. The acquisition shall be made through donation, purchase with donated or appropriated funds, or exchange, or through any combination of the foregoing.

(2) ESTABLISHMENT.—At such time as sufficient lands and waters, and interests therein, have been acquired under paragraph (1) to constitute an initial area that can be administered to carry out the purposes set forth in subsection (a), the Secretary shall establish the Bayou Sauvage Urban National Wildlife Refuge by publication of notice to that effect in the Federal Register.

(3) BOUNDARY ADJUSTMENTS.—The Secretary may make such adjustments with respect to the boundary of the Bayou Sauvage Urban National Wildlife Refuge as may be necessary to facilitate the acquisition of lands and waters, and interests therein, for the refuge and to facilitate the administraton of the refuge.

(c) ADMINISTRATION OF REFUGE.—The Secretary shall administer all lands and waters, and interests therein, acquired under subsection (b) in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) to carry out the purposes set forth in subsection (a). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive environmental education as he considers appropriate to carry out such purposes. Within two years after the effective date of this section, the Secretary shall complete a master plan for the development of the Bayou Sauvage Urban National Wildlife Refuge.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior—

(1) from funds not otherwise appropriated from the Land and Water Conservation Fund, such sums as may be necessary for the acquisition of lands and waters, and interests therein, for the Bayou Sauvage Urban National Wildlife Refuge; and

(2) $5,000,000 for the development of the refuge. The moneys appropriated under subparagraphs (1) and (2) shall remain available until expended.

(e) EFFECTIVE DATE.—This section takes effect on the later of the date of enactment of this Act or October 1, 1986.

STEVENS AMENDMENT NO. 3221

Mr. STEVENS proposed an amendment to the bill (S. 740), supra; as follows:

S. 740, the Emergency Wetlands Resources Act of 1986, is amended by—

(a) inserting, on page 31 between lines 23 and 24, the following new paragraph:

"(5) A person may not be required to purchase an admission permit under subsection (a)(1) for entrance or admission to a unit of the National Wildlife Refuge System created, expanded, or modified by Public Law 96-487.";

(b) striking the period at the end of subparagraph (c)(A)(iii) of section 201 and inserting in lieu thereof ", except those units created, expanded, or modified by Public Law 96-487.".

McCLURE AMENDMENT NO. 3222

Mr. STEVENS (for Mr. MCCLURE) proposed an amendment to the bill (S. 740), supra; as follows:

On page 27, strike all of lines 1 through 4 and insert in lieu thereof: "(1) The term 'Committees' means the Committee on Merchant Marine and Fisheries and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate.

On page 29, line 4, delete "and".

On page 29, line 6, delete "and" and after line 6 insert in lieu the following: "(iii) issue at no charge lifetime admission permits as authorized in section 4(a)(5) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4-4601-11).".

On page 30, line 7, delete "or".

On page 30, line 9, strike "Act." and insert "Act; or".

On page 30, after line 9, insert the following: "(D) a valid lifetime admission permit as authorized in section 4(a)(5) of such Act.".

On page 30, line 12, delete "$7.50." and insert "$3.00 for individuals or $7.50 per vehicle.".

On page 31, strike all of lines 1 through 11.

On page 31, line 12, strike "(5)" and insert "(4)".

On page 38, on line 20, delete "sion and shall be eligible without regard to location." and insert "sion.".

WETLANDS LOAN ACT EXTENSION

CHAFEE AMENDMENT NO. 3223

Mr. STEVENS (for Mr. CHAFEE) proposed an amendment to the bill (H.R. 4531) to extend to Wetlands Loan Act, and for other purposes; as follows:

On page 3, after line 2, insert the following new section:

SEC. . CONVEYANCE OF FISH HATCHERY TO STATE OF NEW HAMPSHIRE.

Notwithstanding any other law, the Secretary of the Interior and the Secretary of Agriculture shall convey, without reimbursement, to the State of New Hampshire no later than December 31, 1986, all of the right, title, and interest including the water rights, of the United States in and to the fish hatchery property located in the northwest corner of Berlin township in the White Mountain National Forest, New Hampshire, and known as the Berlin National Fish Hatchery, consisting of 510 acres, more or less, of land together with any improvements and related personal property thereon. The property conveyed shall be used by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION

METZENBAUM AMENDMENT NO. 3224

Mr. BYRD (for Mr. METZENBAUM) proposed an amendment to the bill (H.R. 3559) to amend the act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes; as follows:

On page 3, at line 15, after the word "logo," insert the following language,

"Such rules and regulations shall provide, among other things, that all projects, goods, and services as to which use of the logo is authorized shall be educational or commemorative, and shall relate to the bicentennial of the United States Constitution, the establishment of the Federal Government, or the Bill of Rights, and none of such projects, goods or services shall exploit the United States Constitution or the Bill of Rights. The purpose of the Commission in authorizing use of the logo shall not be primarily or exclusively to raise funds."

GAUCHER'S DISEASE AWARENESS WEEK

METZENBAUM AMENDMENT NO. 3225

Mr. BYRD (for Mr. METZENBAUM) proposed an amendment to the joint resolution (S.J. Res. 352) to designate the week beginning September 7, 1986, as "Gaucher's Disease Awareness Week"; as follows:

Strike out "September 7, 1986" wherever it appears and insert in lieu thereof "October 19, 1986."

ADDITIONAL STATEMENTS

THE 100TH ANNIVERSARY OF AVON PRODUCTS, INC.

● Mr. D'AMATO. Mr. President, I rise today to call the attention of my colleagues to the world's leading manufacturer and distributor of cosmetics, fragrances, and fashion jewelry: Avon Products, Inc. This company, headquartered in my State of New York, is celebrating its 100th anniversary. It has provided an earning opportunity for many women.

Avon's support for women's endeavors in many other fields is worthy of commendation. It has sponsored Avon championship tennis and marathons for female runners throughout the world and other women's sports, as well as cultural and achievement programs such as a scholarship program for young women seeking careers in sales.

For 100 years Avon has offered millions of women the opportunity for personal and professional growth. It was natural then for Avon to serve as an official sponsor of the restoration of our country's most important symbol of opportunity: The Statue of Liberty. Also, in keeping with its commitment to women's professional development, Avon was honored to sponsor and train the official guides for Liberty Weekend, 250 outstanding college women from across the country.

Avon has sought to be a responsible corporate citizen, sharing its success and contributing to the well-being of society. Through the Avon Foundation it has supported minority programs, womens' organizations, hospitals, health agencies, and community groups with its financial and product donations. Avon has set an outstanding example of corporate good citizenship, both by general financial volunteer action awards and by a policy of strongly encouraging its employees to take part in community volunteer programs.

Mr. President, over the past 100 years Avon has grown from a company with one product and one representative to an effort reaching millions of

people throughout the world. Success and growth have graced Avon's history. I ask unanimous consent that a copy of a letter from the President, congratulating Avon for its past 100 years of providing people, especially women, the opportunity to grow personally and financially, as well as Avon's personal service to families across our Nation and around the world, be printed in the RECORD at the conclusion of my remarks.

I am certain that my colleagues join with me in commending Avon for its outstanding accomplishments and its commitment to its employees and consumers throughout the world and in congratulating Avon on its 100th anniversary.

The letter of the President follows:

THE WHITE HOUSE,
Washington, D.C.

Congratulations to the people of Avon on your Centennial Celebration. Throughout its 100 year history, Avon has given many people—particularly women—the opportunity to earn and grow, as they provided personal service to families across America and around the world.

Avon has also set an outstanding example of corporate good citizenship, both by generous financial Volunteer Action Awards, and by a policy of strongly encouraging its employees to take part in community volunteer programs. And you go further still by special recognition of outstanding volunteers.

I would also like to send special congratulations to the women and men who are Avon's top representatives. Many of you are successfully managing both family responsibilities and careers. As independent business people, you exemplify that American spirit has made our country great—a belief that you can meet any challenge through initiative, hard work, and dedication.

Nancy joins me in wishing everyone at Avon continued success as you move into your second century of helping make America beautiful.

With best wishes,

RONALD REAGAN.●

COSPONSORING S.J. RES. 403

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of Senate Joint Resolution 403, introduced by my distinguished colleague from Delaware which designates 1988 as the "National Year of Friendship with Finland."

Finns have been a part of American society since 1638 when they first settled in a Swedish colony along the Delaware River. As a result of the influx of more Finnish immigrants, new communities were established in New York, Delaware, Pennsylvania, New Jersey, and Maryland. Their population grew in size until the Finns became the third most represented culture in the original 13 Colonies during the 17th century.

Today, there are approximately 700,000 Americans of Finnish descent living in the United States. There contributions to American society have been as continuous as they have been plentiful. It is only fitting that we honor these people for their valuable contributions to American life for over 340 years. I urge the Senate to join in commemorating our long and prosperous relationship with the Finnish people.●

S. 2770—AMENDMENTS TO FARM CREDIT ACT OF 1971

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of S. 2770, amendments to the Farm Credit Act of 1971, introduced by the distinguished Senator from Mississippi.

The Farm Credit System is in trouble. Over the years it has faced increased competition from other savings and loan institutions. These competitors have taken full advantage of the relatively high interest rates—forced upon them by the Farm Credit Administration—charged by the farm credit banks. As a result, farmers are turning to banks outside the system for loans.

The Farm Credit Administration's refusal to lower their interest rates to match their competitors has worked toward their detriment. It is for this reason that Congress has taken an interest in the plight of the farm credit banks. Without Federal intervention, it is unlikely that the system will be able to continue to compete with banks offering lower interest rates on loans. The present system not only hurts the American farmer, it also impairs the ability of the Farm Credit System to maintain its market share and to manage properly its assets and liabilities.

S. 2770 would permit individual units of the Farm Credit System to set interest rates at levels which they determine to be competitive with other lenders in their immediate areas. As the system works now, any bank within the Farm Credit Administration must submit formal applications to its regulator before interest rates can be adjusted in any given part of the country. In a market where interest rates change rapidly, the present system is inflexible and inefficient. The Farm Credit System must have the flexibility to change its rates in response to daily changes in the marketplace in order to serve its borrowers and manage its business as a successful institution.

I commend Senator COCHRAN for introducing S. 2770. It has become obvious that the Farm Credit System is not allowing its individual units to compete with other banking institutions. Those who are most affected by the high interest rates are the farmers and the Farm Credit System itself. The marketplace remains the best determinant of price. Until the FCA realizes this, and begins to implement policies that allow for more flexibility of interest rates on loans, it is necessary for the Congress to take action. I urge the Senate to consider the merits of this bill and to vote for its passage.●

HONORING JOHN F. SYSTMA

● Mr. D'AMATO. Mr. President, on Wednesday, October 8, the New York Susquehanna & Western Railroad will be holding a testimonial dinner for one of their own, John F. Systma, in Cooperstown, NY. John is retiring after 46 years of active railroad service. During that entire time he was on the roster of the Susquehanna.

John Systma began his career at the age of 19 as a fireman on the railroad. During World War II he ran locomotives for the United States Army in the Philippines and Korea. Returning to the Susquehanna in 1946, he was promoted to engineer. In 1956, he moved into a union leadership role as general chairman of the Susquehanna. That same year John began work in the BLE grand office as chief clerk and office manager. In 1962 John was elected general secretary of the BLE. He was elected first vice president in 1974 and finally in 1976 John Systma was elected president of the Brotherhood of Locomotive Engineers.

John Systma guided the BLE through 10 turbulent years in the railroad industry. During his time of leadership the Nation saw many bankruptcies and massive railroad restructuring. Through it all his union remained strong and vibrant. John personally made many contributions to the policy concepts that resulted in the creation of Conrail and the deregulation of the railroad industry in 1980, and he saw to it that, first and foremost, the interests of the members of the Brotherhood of Locomotive Engineers were protected. He leaves a stronger railroad industry than the one he entered, and he leaves a legacy to a strong union that will long be remembered.

The Susquehanna Railroad is a small carrier, but in men like John Systma it has produced some giants. I will note here that a former Vice President of the United States, Garrett Hobarth, who served under William McKinley, was a director and executive of the Susquehanna Railroad. He was one of the strongest Vice Presidents in the history of the Nation, with the nickname "Assistant President." His death in 1899 created a vacancy which was filled by Teddy Roosevelt, 1 year before the McKinley assassination. Thus, we were denied President Hobarth of the Susquehanna. With men like Hobarth and Systma, we look forward to what the Susquehanna will produce next.

I am sure my fellow Senators join me in congratulating John Systma on an outstanding career.●

THE 100TH BIRTHDAY OF GEN. CHIANG KAI-SHEK

● Mr. D'AMATO. Mr. President, I rise today to join my distinguished colleague from Arizona in commemorating the 100th birthday of Gen. Chiang Kai-shek.

On the last day of October 1887, a boy was born who was destined to become one of the great leaders of China and of the modern world. This young peasant boy, who was known to his countrymen as Chiang Chungcheng, fulfilled his boyhood dream of becoming a soldier by attending a military academy in Japan in 1906.

It was in Japan that young Chiang became acquainted with Dr. Sun Yat-sen, the father of the Republic of China. The two joined together to implement Dr. Yat-sen's vision of China's future. Their combined efforts were successful until the untimely death of Sun Yat-sen in 1925.

Chiang Kai-shek then bore the burden of leadership alone and led the Chinese into an era of unprecedented progress known as "the Golden Decade" from 1927-37. The advancements achieved during Chiang Kai-shek's tenure came to an abrupt halt in 1937, however, when the Japanese began their invasion of China. For 4 embattled years, Chiang and his people fought bravely, but were no match for the modern and well-equipped Japanese.

Just as the Chinese were beginning to feel the pressure of the invasion, the Japanese bombed Pearl Harbor and drew the United States into World War II. The Japanese were then forced to turn much of their attention to the war raging in the Pacific. The allied powers embraced General Chiang into their company and designated him the supreme commander for the Allied powers in the Far East.

After World War II, the Chinese celebrated their victory over the Japanese, but this celebration was short-lived as the Chinese Communists challenged the nationalist government. Unable to withstand the Communist aggression, Chiang Kia-shek and his government withdrew to self-imposed exile on the island stronghold of Taiwan.

Today Taiwan exists as a showplace of freedom in the Far East. Chiang knew that human freedom was the foundation on which the modern state must be built. He wasted no time in implementing the same rehabilitation program that he had envisioned for mainland China. It included land reform, compulsory education for all children, a modernized, well-trained army, and universal suffrage. Millions of Chinese have defected to Taiwan from mainland China, which millions more hopefully await their release from the ugly grip of communism.

Chiang Kai-shek serves as a shining example for freedom fighters around the world. He fought communism longer and harder than any other free world statesman, past or present. President Franklin Roosevelt spoke of Chiang Kai-shek as a man of great courage and vision, with a remarkably keen understanding of the problems of today and tomorrow.

Today I take pride in honoring such a great man as we approach the 100th anniversary of his birthday. His philosophy and leadership are an inspiration to all of us who believe in the virtues of freedom and democracy.●

SETTLEMENT OF CERTAIN CLAIMS OF THE PAPAGO TRIBE ARISING FROM THE OPERATION OF PAINTED ROCK DAM

● Mr. GOLDWATER. Mr. President, H.R. 4216, will give new hope to the members of the Tohono O'odham Tribe (formerly Papago), living on the Gila Bend Indian Reservation in Arizona. Basically, the proposal provides $30 million to the Tribe for land acquisition and for economic and community development.

The history of this reservation goes back to 1882 when President Chester Arthur, by Executive order, created a 22,400-acre Gila Bend Reservation, through which the Gila River runs, in southwestern Arizona for the Tohono O'odham Tribe. In 1909 President Wilson decreased it to 10,297 acres. This remaining acreage is now of little economic use because of the combined effects of the Gillespie and other dams constructed upstream, and of flooding caused by the operation of the Painted Rock Dam downstream. Of the 800 members of the tribe at Gila Bend, 425 reside in 68 houses on 40 acres at San Lucy village, where per capita income is barely $1,000 a year. Most of the other tribal members live near the reservation in comparable conditions. Eighty percent of the work force is unemployed.

How this sad situation evolved merits our attention and corrective action. in 1950, Congress authorized construction of Painted Rock Dam on the Gila River 10 miles downstream from the Gila Bend Reservation. The dam was to provide flood protection to the Wellton-Mohawk and Yuma Mesa divisions of the Gila reclamation project and the city of Yuma, AZ. The Army Corps of Engineers in 1956 advised the tribe that it preferred to purchase only a flowage easement for 7,700 acres of the reservation.

An acre-for-acre exchange of reservation for other public lands was considered as was selling the reservation, but rejected by the tribe, in large part because they were told that their lands would be flooded so infrequently that they would be able to continue to farm within the flowage easement. The Indians would have to move from the lands within the flowage easement, but could continue to use the land for grazing and farming.

Construction of the Painted Rock Dam was completed in 1960. Because the corps and tribe were unable to come to an agreement on the land, the United States, in January 1961, filed in Federal district court a declaration of taking for a flowage easement in lands of the Gila Bend Reservation. In November 1964, the court granted the easement, giving the Federal Government the right to occasionally overflow, flood, and submerge 7,723.82 acres of the reservation, or 75 percent of the total acreage. The original Corps of Engineers' appraisal for a flowage easement in lands of the Gila Bend Reservation was $16.75 per acre, a few cents higher per acre than the appraisal for the flowage easement for 18,866 acres of non-Indian land. The non-Indians contested the appraisal and were awarded compensation based on a per-acre value more than three times that of the original appraisal. The non-Indians were paid accrued interest from the date of the declaration of taking, but the tribe was not. Compensation in the amount of $130,000 was paid to the Superintendent of the Sells Agency on behalf of the tribe.

As has been stated, expressed representations were made by the Army Corps of Engineers and the Bureau of Indian Affairs that the Indians would be able to continue to farm and graze the land within the flowage easement. The Army Corps of Engineers' October 1957 appraisal reports for the Painted Rock flood control project say:

> * * * or 4,208 (acres) is typical Gila River bottom land that has a variable soil that, if properly drained, would make good farmland with good irrigation practices. Poorly drained areas and alkali spots would develop, but it is reasonable to expect that 65 percent of it could be farmed upon comparing it with surrounding land. In other words, about 2,750 acres of this entire tract could be developed if irrigation water were made available.

The first flooding of the reservation occurred in 1978-79, and it took 11 months for the water to recede off most of the reservation. Since then, major floods occurred in 1981, 1983, and 1984 and each time a large standing body of water remained, it was many months before the water receded. Quite simply, the extent and duration of the flooding are far greater than was projected at the time the dam was authorized and constructed. The Indians' lands have been rendered useless.

In response to the situation at the Gila Bend Reservation, Congress, in Public Law 97-293, directed the Secretary of the Interior to conduct a study to determine which lands, if any, had been rendered unsuitable for agriculture by reason of the operation of

Painted Rock Dam. If the study determined that the lands had been rendered unsuitable for agriculture, then the Secretary is authorized to exchange such lands for an equivalent acreage of public lands of a quality equal to those diminished by the operation of the dam.

The BIA study, completed in 1983, concluded that the reservation's arable land of 5,962 acres had been rendered unsuitable for agriculture. The remaining 4,000 or so acres of the reservation was also unsuitable for the grazing of livestock because of repeated flooding, silt deposition and salt cedar infestation. Over $5 million would be required to clear just the arable land of the salt cedar and level it. And, since this land lies within the flowage easement, it is not unreasonable to think you would have to repeat this rehabilitation process.

Subsequent to the study, the Bureau of Indian Affairs contracted with the tribe to identify 5,962 acres of land suitable for exchange. The tribe studied lands within a 100-mile radius of the reservation, and in April 1986, it is concluded that there are no suitable lands within that area.

Mr. President, the bill before us would authorize payment of $30 million to the Tohono O'odham Tribe, to be paid over a 3-year period, to be used for land and water rights acquisition and economic and community development. This would allow the Tribe to purchase up to 9,880 acres of replacement lands for the Gila Bend Reservation which would be held in trust for the Indians. The lands may be acquired within Maricopa, Pinal, and Pima Counties, but outside the corporate limits of any city or town. In exchange, the tribe will assign to the United States all rights, title, and interests of the tribe in 9,880 acres of land within the Gila Bend Reservation. In addition, the tribe will execute a waiver and release of all claims which the tribe has against the United States for past injuries to land and water rights.

The $30 million figure seems high, but the tribe has a very good case to make it higher. If one goes by the Corps of Engineers' 1957 appraisal report, 2,750 acres at a minimum could be available for farming. Take that figure and multiply it by 5.4, the Bureau of Reclamation's standard duty of water, and then multiply that resulting sum by $2,000, which is the average cost of water acquisition per acre-foot in central Arizona. Your final figure is about $30 million and this is only for the water right. The tribe has foregone the cost of the land and damages. As I said, Mr. President, the figure could be higher since the 1983 Bureau of Indian Affairs study showed that the tribe actually lost 5,962 acres of arable land.

Though H.R. 4216 is different than the proposal which Senator DECONCINI and I introduced earlier in this session, I think this is a very fair bill. It will provide opportunity for a landless people and give the Indians a chance at developing an economic base.●

SETTLEMENT OF CERTAIN CLAIMS ARISING FROM THE CONSTRUCTION OF TAT MOMOLIK DAM

● Mr. GOLDWATER. Mr. President, H.R. 4217, is an amended version of legislation I introduced earlier in this session, with my colleague, Mr. DECONCINI. Its purpose is to settle claims of the Tohono O'odham Indian Tribe [Papago] against the United States arising from construction of Tat Momolik Dam and Reservoir on the tribe's reservation in south central Arizona.

In 1965, Congress authorized the construction of Tat Momolik Dam in the Flood Control Act of 1965. The dam was designed to be a multipurpose facility, providing water conservation, fish and wildlife, recreation, area development benefits, and flood control for the cities of Casa Grande, Stanfield, and Maricopa, and 46,000 acres of irrigated farmland north of the Sells Papago Reservation.

It was contemplated by the Army Corps of engineers that a flowage easement of 9,080.92 acres would be necessary and that the tribe would be compensated for such an easement. In addition, it was thought the tribe would donate 5,323.78 acres to the United States for the dam and conservation pool. The tribe did indeed consent to provide the flowage easement and the necessary additional land; however, this was conditioned on the United States providing water conservation storage, fish and wildlife and recreational facilities, and construction of a 1,640 acre irrigation system at Vaiva Vo, downstream of the dam.

The Corps of Engineers completed construction of the dam in 1974 and compensation for the flowage easement was agreed upon; however, the United States refuses to pay the tribe for the 9,080.92 acres of land, unless the tribe grants the appropriate rights for the dam, its appurtenances, and reservoir. The tribe, in turn, has refused to execute and deliver to the United States the easements it seeks and has refused payment for such because of the United States' failure to provide the tribe the promised benefits. The United States is still without appropriate lands rights for this large earthen dam.

Only 500 acres of the proposed 1,640 acres Vaiva Vo Irrigation Project have been constructed by the Bureau of Indian Affairs, though an additional 200 acres have been developed by the tribe prior to the dam's construction. In addition, the Interior Department acknowledges that the dam and its reservoir will never provide a dependable water supply for irrigation. As the Department testified before the Indian Affairs Committee in July of this year, "Despite some recharge from the reservoir, any remaining prospects for a successful operation of a full-scale agricultural enterprise at Viava Vo are already compromised by a depleting groundwater supply."

The Army Corps of Engineers and the Department of the Interior have acknowledged that the tribe has suffered inequities and have proposed that the tribe forego the irrigation project and accept a cash settlement for the value of the land and the flowage easement, with interest from 1972 to 1986. The tribe has agreed to a settlement which also provides fair compensation for the loss of the benefits associated with the irrigation project.

The legislation before us, Mr. President, will do just that. It provides for a one-time payment of $6 million in fiscal year 1988 to the tribe and the United States will receive appropriate rights to the dam site and a flowage easement. In addition, the Secretary of the Interior will be required to construct fences and cattle guards in the immediate vicinity of the dam and reservoir, as the muddy shoreline continues to be a sometimes fatal hazard to the livestock. Mr. President, H.R. 4217 provides a settlement in lieu of protracted litigation.●

HUMAN SERVICES REAUTHORIZATION ACT AMENDMENTS OF 1986

● Mr. GRASSLEY. Mr. President, President Reagan signed into law on September 30, 1986, the Human Services Reauthorization Act Amendments of 1986. Included in this act are provisions that authorize funding through 1990 for the Head Start Act, the Low-Income Home Energy Assistance Act, and the Community Services Block Grant Act. I had the opportunity as a member of the Senate Committee on Labor and Human Resources to participate in the hearings on this legislation, and to become deeply involved in the deliberative process. As an original cosponsor of this measure I am pleased at the enactment of what I believe to be vital and responsible legislation.

I am deeply committed to the Head Start Program because of its high degree of success in reaching low-income preschoolers and providing them with needed health, education, and general support services they need to get an even start with their peers in school. Moreover, Head Start stresses parental participation and involvement in the development and oper-

ation of the programs, and I remain firm in my belief that parental involvement is the major factor contributing to the high degree of the program's success. For every 15 youngsters enrolled in this program, 10 parents volunteer their services. In addition, teachers, business people, and other members of the community volunteer their time and energy to affect in a positive way the abilities of the less advantaged children in their neighborhoods. In my State of Iowa, volunteer labor and other noncash contributions to Community Action Programs represented 9.4 percent of cash financing in 1985, up from 3.8 percent in 1982.

The administration proposed in its fiscal year 1987 budget to eliminate funding for the Community Services Block Grant Program. The administration argued, for example, that CSBG-supported services duplicated those provided by local social service agencies. The findings of General accounting Office study which was reported in May 1986 concluded that not only did CSBG-supported services not duplicate those offered by local social service agencies, but actually complemented the long-term services offered by these agencies. In west central Iowa, farmers and farm families represent the fastest growing segment of those using the services of the Community Action agencies in that region. Through CSBG dollars, local Community Action agencies are able to provide short-term emergency assistance to low-income families including thousands of newly poor farm families.

The continuing crisis in the farm economy has resulted in displacement and unemployment of workers in many States. Families who have been self-sufficient in the past are turning to Community Action agencies for job placement, emergency food pantries, and information on other resources. I worked in the Budget Committee to ensure the continued funding of the CSBG Program, and I am particularly encouraged that the Senate-House conference committee on H.R. 4421 agreed to report language that directs the Secretary of Health and Human Services to promote job creation and enterprise development in distressed rural communities, and to promote coordination with other State and Federal efforts.

In conclusion, I would like to state that I am in favor of budget cuts, but believe that meritorious programs should be sufficiently funded. These programs work, and I commend my colleagues for working long and hard to see to it that the programs continue to receive the Federal support they need.●

A POOR EXAMPLE

● Mr. SIMON. Mr. President, there can never be enough said about the importance of human rights. As a nation, we have been striving to bring equality and protection from discrimination for all people around the world. Since the signing of the Helsinki accords in 1975, we have expected that all signators to the accords, including the Soviet Union, would abide by this pact. The sad truth is, however, that the Soviet Union has not upheld the human rights provisions of the Helsinki accords.

Naum and Inna Meiman, two elderly Soviet citizens, are very close friends of mine. They are being denied emigration privileges to the West. The Meimans are not allowed to practice their religion, their phone has been removed, and they have been followed on more than one occasion. Inna is deathly ill with a malignant carcinoma on her spine. After removing four previous tumors, the Soviet physicians feel there is nothing more they can do for her. Although there is experimental treatment available for Inna in the West, the Soviets still refuse to allow her to emigrate. These are blatant violations of the Helsinki accords.

I strongly urge the Soviet Union to allow Naum and Inna Meiman to emigrate to Israel.●

MED WEEK

● Mr. BUMPERS. Mr. President, October 5–9, 1986, is Minority Enterprise Development Week. I stand in celebration of MED Week and join in spirit with the several hundred people who gather tonight at the MED Week banquet in Little Rock, AR, in recognition of this special occasion.

Most minority businesses are small businesses, and small businesses created 100 percent of the net new jobs gained in the Nation in 1980, 1981, and 1982. As you know, I am a member and the ranking Democrat on the Senate Small Business Committee. The committee has fought for programs which assist and encourage small business development because small business creates jobs, is innovative, enhances the economy and often provides entry into the mainstream.

Last year, the committee produced an SBA reauthorization bill which passed the full Senate on July 16, 1985, and which was finally signed by the President on April 7, 1986. I coauthored that bill with Senator WEICKER. Although we drastically changed the structure of SBA's programs, we preserved two programs which are vital to the particular needs of minority business and have done much for the Arkansas economy. The 8(a) program provided over $11.1 million in contracts to minority firms in fiscal year 1985, and the Minority Enterprise Small Business Investment Company Program leveraged much needed venture capital for minority firms.

The development of minority businesses will enhance the economy and is an essential part of small business growth. We have made great strides in our work for small and minority business and these businesses have repaid our Nation with jobs. Still, there is much work to be done and I encourage you, Mr. President, and my colleagues to rededicate yourselves to this work. Together, I know we can do much.●

THE ANNUAL CONFERENCE OF THE ARKANSAS CHAPTER OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

● Mr. BUMPERS. Mr. President, the Arkansas Chapter of the National Association for the Advancement of Colored People holds its annual conference this weekend in Hope, AR. Today, 1 day after the Senate voted overwhelmingly to overturn the veto of the sanctions legislation to end apartheid in South Africa, I think it is appropriate to recognize the NAACP and remember that it was not long ago that our own Nation was caught up in a turbulent struggle for racial equality and social justice.

The need for sanctions to hasten the end to apartheid was clear. U.S. policy should be based on our own most fundamental values: liberty, justice, and equality. If we had failed to impose sanctions against South Africa to exert pressure for constructive change that country would certainly have spiraled deeper into violent, racial revolution like the world has never seen. The inequality of apartheid is the root of that revolution. The one true lesson of history is that man will forever yearn to be free. We must be on the side of those seeking liberty and the chance to be equal in their own country.

I believe most Arkansans support the sanctions because in our State we pride ourselves in doing what is right. The Senate, through a bipartisan effort, did what it felt was right. The 78 votes to overturn the veto, coincidentally, was the same number of votes that passed the Martin Luther King holiday bill on October 19, 1983. Mr. President, I was a proud cosponsor of that legislation.

The NAACP should be saluted for its many and successful efforts in promoting equal opportunity. The organization is alive and well in Arkansas. As a nation, we have made great strides, but there is still much to be done. In closing, I ask that we rededicate ourselves to the task at hand, to doing what is right and to improving race relations.●

ABORTION AND INFORMED CONSENT: KENTUCKY

● Mr. HUMPHREY. Mr. President, abortion is not safe physically or psychologically. I am troubled that this myth is perpetuated despite the contradicting evidence available to us. Gaye in Kentucky tells us about both of her problems concerning informed consent, and I believe my colleagues will learn much by reading her letter.

"He gave me drugs and took my baby from me." This is precisely the procedure women face when they seek assistance with a difficult pregnancy. Gaye obviously received little if any counseling about the abortion procedure or its aftereffects. The results of this lack of informed consent are predictable: Gaye was filled with guilt and remorse. I hope my colleagues will join me in cosponsoring S. 2791 so that we can end the silence and misinformation these women face when they seek help with an unplanned pregnancy.

I ask that Gaye Webster's letter be printed in the RECORD.

The letter follows:

COVINGTON, KY,
June 5, 1986.

SENATOR HUMPHREY: I wish to thank you for your support in the fight to stop abortion and to get to the floor of the Senate a bill to make them inform any woman of its effects.

I've had an abortion!

My husband was a drunk. I already had two children. I just couldn't think of having other babies.

I didn't know anything about abortion. My friend took me to a doctor. All I really knew is that I wanted to have my period.

He gave me drugs and took my baby from me. I started to bleed when I got home. I almost bled to death. I had no help, nowhere to turn. I did get through that, but my health was never good again.

This was not the worst. The psychological effects were the worst. There was guilt—I was suicidal when I lay down at night and I heard babies crying. I was full of anger and rage and had no self-esteem. Regret and remorse stayed with me.

Thank God for saving me. It breaks my heart to think of how many girls are suffering the way I did.

So please see to it that they are informed before the abortion procedure. I pray for all those girls each day. I pray they will get help.

GAYE WEBSTER.●

THE REPUBLIC FINANCIAL CORP. BANKRUPTCY

● Mr. BOREN. Mr. President, too many times in the course of our lives, rules and laws are set or interpreted in a way that evades any grasp of common sense or intent of the law. It is under such circumstances that we in public service must work to clarify the rules which govern us and see that innocent people are not punished for the mistakes of others.

Mr. President, I will ask that the following article by Mr. Tom Carter from the Sunday, September 28, 1986 edition of the Tulsa World be inserted in the RECORD regarding the financial experiences of one family who were so affected, Mr. and Mrs. Max Bird.

The Republic Financial Corp. of Tulsa, OK, filed for bankruptcy in September 1984. Many individuals and other depositors, who had invested in this company, lost millions of dollars in a case which is still being discussed and litigated in our courts.

The institution was not subject to regulation by the FDIC or any other deposit insurance agency—whether State or Federal. As an investment company of sorts, it was in the realm of State oversight and one company of the Republic network was in the purview of and, at one point, appropriately disciplined by, the Federal Reserve Board. Thus, when the companies reached the point of insolvency— due to a divestiture order—it had little alternative but to file chapter 11 bankruptcy.

Our Bankruptcy Code has been written to provide a fair and equitable system of procedures for those individuals and business concerns who have had or been associated with irreversible financial difficulty—whether through normal economic conditions or illegal activity. It seeks to remedy the loss bestowed on those innocent of wrongdoing in rebuilding their financial loss. It likewise was written to discipline those who have wrongfully helped cause such a financial crisis.

Mr. President, I do not at this point make any challenge to the effectiveness or lack thereof, on the part of the Federal Reserve or any State agency. Rather, in trying to remedy the loss experienced by people like the Bird's, we must look at the bankruptcy laws in our country and see how they are interpreted.

Over 2 months prior to the bankruptcy of the Republic companies, legislation to amend the Federal bankruptcy laws, which passed Congress, was signed by the President. These changes were not technically effective until October 10, 1984, 16 days after Republic's bankruptcy. One critical provision is one which stated that deposits withdrawn from a firm within 90 days of its filing bankruptcy were subject to recovery by the trustee, unless it was withdrawn in a normal business transaction.

Clearly, Mr. President, the Bird's, nor many of those who withdrew thrift certificates within 3 months prior to the bankruptcy, can be accused of any informed or intentional plot to take out their money from a failing investment firm.

I believe that to find otherwise is to violate the intent and spirit of the law. Mr. President, if those who did withdraw funds simply in the normal course of business are penalized for doing so in this bankruptcy proceeding, I intend to introduce legislation that will retroactively allow those depositors in the Republic case, to be exempt from any recovery action.

While this legislation will obviously have to be drafted for next year's session of Congress, I hope that it will encourage a fair, legal accommodation for these individuals within the discretion of the bankruptcy trustee and the courts. Even before the Federal legislation became effective on October 10, 1984, it was, in my opinion, not within the spirit of the law to penalize those who simply act in a normal prudent course of business.

I ask that the Tulsa World article be printed in the RECORD.

The article follows:

HIS MONEY NOT HIS, REPUBLIC DEPOSITOR DISCOVERS

(By Tom Carter)

The approximately 5,000 people who lost $60 million in the bankrupt Republic financial institutions are old news. But there were about 150 of the depositors who thought they had lucked out.

They withdrew their certificates of deposit, after the CDs had matured, and before Republic filed for bankruptcy.

Later, they were asked to give the money back. More recently, they were sued for it.

Max and Mable Bird are among those 150. Max is 57 years old, is suffering from the aftermath of polio, and had almost $50,000 at one time in the Republic financial institutions. On Sept. 5, 1984, Bird withdrew $17,997.45.

The withdrawal came 19 days before Republic closed. The withdrawal represented a matured CD, and money to which Bird was entitled.

Max worked 21 years to earn it. For six of those years, he worked a double shift.

He was an instructor for the Spartan School of Aeronautics where he received a retirement pension in a lump sum. It amounted to about $30,000, and he put that also in Republic. He never saw that money again.

Max used the $17,997.45 he recovered to pay medical bills for his wife, for a life insurance policy, for a pickup truck, and for central heating and air conditioning. The purchase, they thought, was worthwhile. The fan-blown air eased Mable's crippling arthritis.

But the money is gone, and Max can't afford the brace he needs to help with what polio did to his foot. He wants to get a job, but he is old in the labor market, and he has trouble getting around.

The crippling effects of polio keep him from getting a job that would enable him to ease the expenses his family must bear.

"Surely there isn't a judge or jury in the land that will make us give back the $17,000," Max says.

"But what if the court does rule against you?" Bird is asked.

"Well, I haven't got any money," he answers. "Maybe they could make me mortgage my house. And if they do that, I'd have to let the state buy my groceries for awhile. It's awful to work a lifetime and save your money and have somebody keep most of it. Then they give you a little bit, and then they sue you to get that part back."

Before Max was sued, he received a letter from a lawyer asking him to return his CD.

The letter said that if Bird didn't want to comply, he had better hire a lawyer himself.

Attorney R. Dobie Langenkamp is the trustee for bankrupt Republic Financial Corp. It's his job to salvage money for creditors.

He interprets bankruptcy laws to say that people who withdrew funds 90 days or less before Republic went under are not entitled to all their money, even though they did not know Republic was going to close, even though their CDs had matured.

His is the majority interpretation among lawyers familiar with the litigation. Bankruptcy Judge Mickey Wilson will have the final say this fall.

"There are some real hardship cases, but it's been blown out of proportion," says Langenkamp. "We're talking about 5,000 people here whose lives have been damaged. Those 150 people can't obscure me from getting their part of the $4 million or $5 million that was lost and from spreading it around among the other 4,850 people."

So until the court hearings, Langenkamp will continue to work on the lawsuits to get money from people who got it out of Republic in time.

And Max Bird will not work at all. That's because he's old and has been crippled by polio.●

THE RERTR PROGRAM

● Mr. SIMON. Mr. President, I would like to make a brief statement commending the Department of Energy for coming up with the funds to save a very important nonproliferation effort, the Reduced Enrichment for Research and Test Reactors [RERTR] Program. Although RERTR is technically in the budget for the Arms Control and Disarmament Agency, it has been administered and run by the Energy Department and two of its national laboratories—Argonne National Lab in Illinois and Oak Ridge National Lab in Tennessee.

Several months back a funding problem developed, but the Energy Department, realizing the international significance of the program, agreed to find the money to ensure timely completion of the project. RERTR seeks to convert the 126 research and test reactors around the world—86 reactors abroad in 34 countries, and 40 reactors in the United States—from using highly enriched uranium to using low enriched uranium. Once this is done, the reactor is no longer handling "weapons grade" fuel, or fuel capable of producing nuclear weapons.

Hundreds of kilograms of this weapons grade fuel are now being exported around the world. RERTR, already showing great success, will demonstrate the advantages of using low enriched uranium with their method. Efficiency will not be sacrificed, and we will gain a lot through closing off this route to nuclear weapons proliferation. I commend the Department of Energy for their fine work in this area, and for their wisdom in seeing through the RERTR Program.●

AN ENCOURAGING SIGN—NOT A SOLUTION

● Mr. SYMMS. Mr. President, the Canadians on Monday offered to increase stumpage rates on their public timber in order to sidetrack the countervailing duty petition initiated by the United States timber industry. The offer amounts to something less than a 10-percent increase in their stumpage. This translates to an increase of less than 5 percent in lumber costs.

Mr. President, I am sure that we all welcome this Canadian initiative. It is the first concrete sign we have seen that they believe that we are completely serious about demanding fair treatment for our producers. It is a good start but it is far from satisfactory. I am told that the Coalition for Fair Lumber Imports calculates that a 34 percent duty is required to level the playing field.

The Canadian offer, such as it is, would not have been made without constant pressure from several directions. Congressional action, in the form of legislation, including the tariff bill which I introduced, has forced the Canadians to recognize that the concept of fair trade has strong bipartisan support. The administration's commitment to free, fair trade, as evidenced by the meeting where the offer was made, was a major factor. The real turning point in this ongoing effort was the initiation of the counter-vailing duty petition by the Coalition for Fair Lumber Imports. I salute them for their initiative and persistence.

For the past several weeks, news items in the Canadian media have reflected an increasing awareness that their lumber export practices constitute unfair trade and that the United States would not tolerate the situation indefinitely. More and more evidence is surfacing that Canadian prices do not accurately reflect costs. When the preliminary results of the countervailing duty investigation are announced on about October 9, we will see the full extent of the deliberate Canadian price distortion. That should signal the start of fair competition for our domestic industry. It has been a long time coming and it is an event that we will all welcome.●

COLUMBUS DAY

● Mr. RIEGLE. Mr. President, October 13 will mark the 494th anniversary of the voyage to North America by Christopher Columbus. This event dramatically shaped the history of Western civilization, and ultimately led to the colonization of our great country.

Christopher Columbus, born in Genoa, Italy, in 1451, became skilled at chartmaking and sailing while living in Lisbon, Portugal. Through his study of navigational theory, he became convinced that the world was round. With a crew of 88, three ships, the Nina, the Pinta, and the Santa Maria, Columbus set sail for what he believed to be India.

After 2 grueling months at sea Columbus reached land, but he was a far cry from India. He had landed on what is known today at Watlings Island in the Bahamas. From there he went on to discover the North American and South American continents and many of their coastal island formations.

Because of his skill and courage, Christopher Columbus is considered one of the greatest explorers in history. His curiosity resulted in the linking of the Eastern and Western Hemispheres and has immortalized his name and Italian heritage for all time.

On this special day, it is only fitting that we acknowledge and honor Americans of Italian heritage.

In my home State of Michigan, the Italian American Cultural Society has over 275,000 members. Located in southeastern Michigan, the Italian Community and Cultural Center was founded by the Italian American Cultural Society and was designed to provide a place for the Italian community to meet and grow. Some of the services provided by the center include a senior citizen's program, a sports program, an art gallery, a Montessori nursery program, and an Italian language program. It is here that Italian Americans, as well as the community at large in southeast Michigan, can enjoy and learn about Italian culture and language.

The Italian American Cultural Society also sponsors 45 Italian clubs, organizes parades, dinners, and publishes a monthly newspaper. This organization serves as a prominent center for the Michigan Italian community. The people of Michigan are proud to have such a distinguished organization in our State.

Christopher Columbus exemplifies the qualities of courage and skill which have enabled our country to develop into the great Nation that we are today. It is an honor to pay tribute to him, to his Italian heritage, and to the important contributions of all Italian Americans to our society.●

INVESTMENT TAX CREDITS

● Mr. KENNEDY. Mr. President, last evening the distinguished Senator from Minnesota [Mr. BOSCHWITZ] indicated his concern about the possibility that language in the Tax Reform Act might inadvertently result in the denial of investment tax credits to property placed in service prior to the effective date of repeal. I commend Senator BOSCHWITZ for calling this question to our attention. I have communicated my own views on this matter to Assistant Secretary of the Treasury, Roger Mentz, and ask that a

copy of my letter to Mr. Mentz be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, DC, October 3, 1986.

Hon. J. ROGER MENTZ,
Assistant Secretary, U.S. Treasury Department, Washington, DC.

DEAR MR. MENTZ: I am writing to express my concern that certain provisions of the Tax Reform Act of 1986 may inappropriately be seized upon as a basis for denial or restriction of the investment tax credit allowable on equipment purchased and placed in service prior to the effective dates for repeal.

In this regard a specific concern has been raised with respect to cargo containers. I believe that it was always the intent of the Congress, that the exception for cargo containers be interpreted in a manner similar to the treatment of U.S. flag vessels. The attached memorandum explores this question in more detail.

I commend the views expressed in the accompanying statement to the Treasury and to the Internal Revenue Service for guidance in formulation of policies, rules, and administrative practices for application of the investment tax credit, and look forward to hearing from you in this regard.

Sincerely,

EDWARD M. KENNEDY.●

RECOGNIZING THE OUTSTANDING LEADERSHIP OF RUTH DuBOIS: A VOICE FOR CHILD SURVIVAL WORLDWIDE

● Mr. SPECTER. Mr. President it is with great pride that I commend and congratulate an outstanding Pennsylvanian, Ms. Ruth DuBois, on her work with the Senate children's caucus.

As a private consultant working with the Children's Research and Education Institute of Rydal, PA, Ms. DuBois has traveled and studied the impact of the Child Survival Fund and other aid programs to Third World countries.

Ruth has seen firsthand what the allocated funding has done to improve both the health and education of Third World children, as well as the economies of the countries.

She advocates in her report entitled "Impact of the Child Survival Fund and Other Forms of Aid to Third World Countries," prepared for the Senate children's caucus, that four basic survival techniques need to be implemented through the aid received; growth monitoring, oral rehydration therapy, protection of breast feeding, and expanded immunization. I ask that the report be printed in the CONGRESSIONAL RECORD.

The success of these programs, she indicates in her report need to be supplemented by foreign governments providing the necessary technical and supervisory help, and their continued contributions to the appropriate funds. Also in promoting the success of these programs is the communities involvement to help and be helped.

On September 17, 1986, the New York Times reported on the impressive work of the Child Survival Fund. I ask that the article entitled "An Unsung Live-Aid Challenge," be printed in its entire in the RECORD.

Ruth DuBois should be highly commended for her work with the Senate's children's caucus and the programs that benefit from her expertise, deligence and dedication to children worldwide.

I extend to Ruth my best wishes for her continued success in working to improve the health and longevity of infants and children. As the cochairman of the Senate children's caucus be assured that I will continue to strongly support adequate funding for these special programs.

The material follows:

IMPACT OF THE CHILD SURVIVAL FUND AND OTHER FORMS OF AID TO THIRD WORLD COUNTRIES

INTRODUCTION

The following is a summary of a report on the importance of involvement in Third World countries through allocations to the Child Survival Fund, USAID, UNICEF, other funds and through activities of the Peace Corps. The report was prepared by Ruth DuBois, a consultant with The Children's Research and Education Institute, and is based on a trip to Burkina Faso in February, 1985. Full copies of the report are available through the office of Senator Arlen Specter or from the author.

In 1984 Congress appropriated $25 million of the Child Survival Fund to be used outside of the United States. American foreign aid can be categorized as either emergency aid or development aid; monies from the Child Survival Fund go primarily to the latter to improve both health and economy of various Third World countries. Although $25 million is a small amount comparatively, allocation of a few hundred thousand dollars is significant to small countries like Burkina Faso in West Africa.

Burkina Faso, formerly Upper Volta, contains 6.5 million people of various tribes living mostly in villages. There are a few cities and the capital, Ouagadougou, is the home base for agencies serving the entire sub Sahel region, e.g. USAID. Per caita income in Burkina is $210/year, the infant mortality rate is 157 deaths/1000 live births (12th highest) and the literacy rate is 10%. Clearly, Burkina is a needy recipient of our aid.

Burkina Faso is led by Captain Sankara who gained power in July, 1983, following a military coup. His primary goals are to wipe out corruption in the government and to improve the health and economy of the country through self-help and self-determination. He has instituted record keeping by government workers and teachers in every village and has issued edicts for reaching quotas in agriculture. Previously there was little motivation to work or to be accountable in between technical assistance visits from Peace Corps Volunteers (PCV's).

PRIMARY CARE

Financial aid is largely directed to primary care programs and health education and training needs as discussed in a 1985 UNICEF report on improving the health of Third World children. Specifically, four basic child survival techniques are advocated; growth monitoring, oral rehydration therapy, protection of breast feeding, and expanded immunization.

Growth monitoring entails keeping a chart on a child's monthly weight and overall health. Mothers are more disposed to obtain nutritional advice if they are made aware that their child's growth is retarded. An important U.S. contribution would be the development of an inexpensive, light, accurate weighing device for use by community health workers.

Oral rehydration therapy (ORT) is crucial in that it prevents dehydration from diarrheal infection (kills more than 4 million children a year). Child survival funding is partially used for ORT training, education and mass marketing, as well as to supply clinics with ORT packets to stabilize advanced cases of diarrhea. Unfortunately, implementation of these programs in Burkina has been hampered due to a severe cut in USAID funds and staff.

Breast feeding provides the best source of nutrition for infants as well as making them resistant to disease. It is hoped that mothers who are more confident that their children will survive will be more receptive to family planning education. USAID is developing a family planning program for the entire Sahel region. The President's opposition to the International Planned Parenthood Federation, a large provider of family planning services in Africa, will result in an estimated 625,000 unwanted births, an additional 100,000 abortions and at least 60,000 infant deaths from starvation and disease.

For $5.00, a child can be immunized against measles, tetanus, whooping cough, diptheria, poliomylitis, and tuberculosis. In 1984 less than 20% of the developing world's children were immunized for these diseases, resulting in 5 million deaths and 5 million others left mentally or physically disabled. In Burkina, an information campaign, "Operation Commando", using radio, skits, animated films, forums and role-playing, brought the importance of immunization to the people. The United Nations Children's Fund Program Director in Ouagadougou hopes to use some of the Child Survival funds to develop similar models of mass marketing for sanitation education and water filtration education.

While the above four key areas must receive concerted U.S. attention, we must also begin to deal with some of the underlying problems of the Third World such as the status of women. Women in Africa are poor and over worked in a male dominated society and it is no surprise that approximately half of all Third World women are anemic. It is difficult for them to find time and energy for childcare strategies. ORT requires that a mother learn how to mix a solution and to administer it slowly several times a day. Immunization requires several trips to vaccination centers and even where there are good rates of initial participation, drop out rates are very high. Breast feeding demands frequent stoppage of work and monthly weight checks require trips to the clinic. For progress to be made in promoting growth and health among children there must be progress in improving the lives of women. This necessitates a better distribution of the workload with males sharing more of the chores. Foreign governments should assist in providing technological advances, e.g. providing a mill to a village for grinding millet would save a women hours of work a day.

ORGANIZATIONAL DEVELOPMENT

Many improvements can be made on the organizational level of aid distribution. The success of projects appears to rely upon self-help and community development. Village leaders must be trained to act as role models and to educate organized cooperative groups in sanitation, family planning, etc. The government must continue their effort to place health agents in villages who can diagnose and treat 30-40 common diseases. Some get assistance from UNICEF to stock and operate a pharmacy. In unorganized communities the pharmacy fails when the initial stock runs out and the agent cannot replace it because he has "borrowed" from the till to support himself. Often he quits ("burn-out") because there is no reward system. When community development has taken place, incentives are offered to the agent, e.g. a portion of the village harvest and help with chores. Where available, a Peace Corps health extension volunteer can provide ongoing supervision. In Burkina, local midwives are also being trained and sent to villages throughout the country. However, they report that educating new mothers is unsuccessful without ongoing reinforcement within their village group.

The impact of community organizational development on self-help determination is evident in the Dori region of Burkina Faso. For the past 7 years Save the Children Fund has been working with 15 villages to instill the idea of self-help. Farms are planted by the use of extended family cooperation, i.e. all plant one farm and then move to the next. Although funds raised in the U.S. ask for private donations to sponsor a child, the money goes to community projects in that child's village. Funding is given on a credit basis after the villagers plan its use.

A Save the Children agriculture self-help project is the establishment of "cereal banks" whereby farmers can sell grain to banks at a fixed rate with, for instance, an 8% margin. Six months later when there is a shortage they can buy back the grain instead of succumbing to a merchant "scalper". Special training is given in math and book keeping. Peer pressure has kept credit payments at the 90% level. Village ownership is clearly the key.

In some "co-ops" women are attending sewing classes and making clothes for their children. Other organized women have entered into a for-profit weaving business that should expand during 1985. The women go to Ouagadougou to purchase bales of threads and supply it to male weavers whom they hire. (During the dry season men have no farming and take up weaving, wood carving, home repairs, furniture building, etc.) The blankets are sold at market. Currently, Oxfam is thinking of selling them in England and Save the Children is exploring the possibility of an export market in the U.S.

The projects focus on helping the village women earn money because women who have an income will usually spend it on their children. Traditionally, they are more conservative and focus will be on survival.

Save the Children is also assisting with school projects and adult literacy training. While Save the Children projects appear to be successful, they are probably selective in seeking out target areas that are already partially developed and have enough water.

The results appearing in the Dori region after 7 years of developmental aid and assistance serve as an example of the necessity of long term commitments to aid.

RECOMMENDATIONS AND CONCLUSION

The above examination of some of the needs and problems, successes and failure in Burkina Faso as they relate to other Third World countries suggests that the Senate Children's Caucus could play a role in promoting recommendations or policy changes that would enhance our programs abroad.

1. Technical and financial assistance clearly impacts on the lives, health and future of children in Third World countries. Members of the Caucus should continue to support funding to the United Nations Development Program (a relatively small amount—$150 million or 30% of the UNDP annual budget), UNICEF, WHO and the World Bank. Caucus members of the Senate Foreign Relations Committee should seriously consider the outcome of withdrawing funding to Planned Parenthood activities.

2. The Child Survival Fund plays an important supportive role in the implementation of UNICEF's primary care projects. Withdrawal of such funds would seriously affect the success of such programs.

3. USAID's regional efforts in the sub-Sahel will be cost effective if planning continues on a long term basis of at least a generation. By planning regional projects for the sub-Sahel countries, linkage to politics or coups of individual governments can be avoided. Given that community development and self-help determination is a very slow process, the proposed cuts to USAID in Burkina will be extremely damaging to the outcomes of present programs. Where, possible, the Caucus should consider promoting a policy for aid on a multi country/regional long term basis.

4. The Peace Corps deserves the fullest support from Caucus members. These volunteers provide an invaluable source of foreign public relations for the U.S. and are a positive influence on villagers wherever they are located. There are some suggestions for change or redirection that could be explored with Loret Ruppe:

(1) All PCV's living "en brousse" should receive training in basic skills—community organization, primary care, wood conservation, water filtration, sanitation, gardening and basics of the local language (for faster assimilation). In other words, because of their potential influence on family life, they should be generalists in addition to their specific or technical skills.

(2) The presence of English teachers in village schools as a PC activity should be questioned given that community development and health care appear to be more important needs (along with agriculture which is already being addressed). Several PCV's questioned the validity of teaching as many as 65 to 70 children in a class and suggestions for redirection were explored; (a) for Third World countries requesting English teachers, provide a smaller number to the local universities as part of a TOT program; (b) Where a Third World country insists on having English teachers for local schools, develop a curriculum that incorporates nutrition, health, family planning etc. into the English lessons. PCV's would welcome materials from PC in Washington on this.

(3) Consideration should be given to increasing the health extension program similar to the recent agriculture initiative. PCV's seeking funding for health extension projects should be made aware of the Child Survival Fund. In Burkina, the Fund administrator would entertain proposals that would target primary care training and education in small remote villages.

(4) There is little or no coordination of volunteer activities within regions or villages. The foreign volunteers in a community become good friends and it may be possible for the U.S. to somehow provide leadership in promoting cooperative planning, e.g., between French and English teachers in a school, between a German physician and a health extension PCV or between Dutch and American "well diggers".

In conclusion, funds appropriated by Congress to Third World countries and, in particular, the Child Survival Fund, are successfully being used to improve the health and longevity of infants and children. The Senate Children's Caucus should strongly support these efforts and promote policies which would allow ongoing development to occur.

AN UNSUNG LIVE-AID CHALLENGE

It isn't a multimedia event, and there aren't any rock singers to rouse the troops. But a parliamentary struggle in Congress may determine how many children in the poorest nations will be saved next year from their most insidious enemies: measles, tetanus, whooping cough, polio, diphtheria and tuberculosis. By contributing $75 million to a new Children's Survival Fund, Congress can hasten worldwide immunization against these killers—and save perhaps three million young lives next year.

The parliamentary problem is to find an extra $25 million to add to the $50 million already approved for the fund, half of it earmarked for immunizations. With the added money, the United States would fully meet its commitment to spur a campaign that has caught on in 62 poorer countries, which pay most expenses except for the cost of vaccines. Italy is pledging $100 million and Canada has committed $25 million, so the American share is scarcely excessive.

Getting the extra money while staying within budgetary limits means diverting from other programs, normally a dubious idea. But the fund's advocates maintain that $25 million could be transferred from the Export-Import Bank without causing havoc. There may be still better sources.

This much is plain. If nobody sings about foreign aid, it is because it is often disguised security assistance or siphoned to impersonal lending agencies. The Children's Survival Fund is different. Its good works are eminently singable. What once seemed impossible—total immunization against childhood killers—is thought attainable by 1990. Measles, which took two million lives last year, can be defeated with a vaccine costing six cents a shot. It should not be beyond Congressional wit to find the money already authorized.●

SUMMARY OF TASK FORCE ON EDUCATION AND LITERACY

● Mr. SYMMS. Mr. President, we have a plague in the United States that covers the length and breadth of our land; it afflicts more than 20 million Americans; it damages our Nation's productive capacity; it harms our competitive position in international trade; and it causes incalculable heartache and embarrassment to many thousands of families.

Unfortunately, it's not a high profile problem like drug abuse, or a "headline grabber" as are other social issues.

Mr. President, I refer to the problem of illiteracy—the inability to read or write so as to function in society. It's a problem about people—people who cannot read a newspaper, a grocery lable, or a driver's license manual; people who go through life making excuses, turning down promotions, and generally faking it as they try to hide their problem.

During the 2 years that I have chaired the Senate Republican Conference on Education and Literacy, I have become increasingly disturbed by the severity of illiteracy in America. In hearings held in rural Idaho, urban Rhode Island and here in Washington with our Federal Secretary of Education Dr. William Bennett, members of our task force have gained a greater understanding of the problem, heard education experts discuss potential solutions, listened to firsthand accounts of the hardships functionally illiterate individuals encounter daily, and have been thrilled by success stories of persons who have overcome their problem with the help of caring people.

Mr. President, The task force's first goal was to gather information to understand the extent of the problem. We were successful, although we were disturbed by what we found. Depending on whom you believe, there are from 17 million to almost double that number of Americans who cannot read a simple sentence. Many other adults are marginally literate; they barely get by in the most basic reading material. Perhaps as many as 3 out of 4 unemployed Americans are illiterate, and the overall dollar cost to our society may be in the tens of billions of dollars annually, not counting the loss in our gross national product.

Mr. President, another interesting finding is that increased amounts of money—the standard Government solution for all problems—has had little impact on illiteracy figures.

From 1950 to 1984 our Nation expanded total spending on education by $201.7 billion, an increase of 2,292 percent—and that is after adjusting for inflation. During the same time period, illiteracy skyrocketed while SAT test scores fell to new lows nearly every year.

Mr. President, our task force's second goal was to explore innovative solutions and programs that could help functionally illiterate persons overcome their handicap. We saw an effort in which undergraduate college students are given credit for going to jails, inner-city schools, migrant camps, and so forth, and teaching simply educational skills 6 hours per week; public libraries with innovative, structured programs to increase literacy and may I say parenthetically, Mr. President, that our Nation's libraries and the fine librarians who run them are an invaluable resource that we take for granted far too often; we visited a reading workshop where both youngsters and adults are taught phonetically in an exciting, fun program. In fact, its name is Funway Reading Workshop in Boise, ID, and its founder, 81-year-old Judy Yensen, recently won a Jefferson Award for her community service. We corresponded with regional and national groups and organizations about their programs and successes.

In all, I am impressed by the tremendous efforts being made in our private sector by the tens of thousands of concerned Americans; and by the excellent work being done by our adult basic education people, and by others in our local schools and colleges.

Mr. President, another goal of the task force was to bring the problem of illiteracy to the attention of the American public. We felt it was far too important an issue to remain in the closet. We found that functionally illiterate adults are ashamed of and embarrassed by their inability to read or write, and are reluctant to come forward for help lest they be found out. We worked in several areas; with supermarkets, publishing houses, State education departments, private foundations, and so forth.

Also, we cooperated in an effort that affected more people than any other single campaign: the ABC/PBS television work on adult illiteracy—Project Literacy U.S. [PLUS]. I hope all my colleagues saw the excellent ABC documentary "At a Loss for Words" which was recently shown. In addition, ABC has aired frequent public service spots on television and had many programs on radio. It is estimated that 40 million Americans learned about illiteracy as a result of these programs. In fact, during a 2-week period, the national literacy hotline handled more than 40,000 phone calls, more than in the entire previous year.

In a recent letter to me from John E. Harr. the vice president for communications who spearheaded this outstanding effort, he said that as a result of the outreach phase of PLUS, more than 340 community task forces have come into existence. ABC has not stopped there, later this month they will air a program aimed at high school age youngsters, as well as an "ABC After School Special."

Mr. President, I commend the American Broadcasting Co., as a great corporate citizen for their leadership in the battle against illiteracy, and I congratulate John Harr for his vision and hard work.

Mr. President, there is much left to do to help our illiterate and marginally literate citizens. Our task force is committed to continue its struggle. I am proud of the work we have done to date: We have made a difference. I invite all my colleagues in this body to join in this noble effort.●

THE CALENDAR

Mr. STEVENS. Mr. President, on behalf of the leadership, I would like to inquire of the distinguished minority leader if he is in a position to agree that we should pass the following calendar items, or any of them that I mention: Calender Nos. 884, 891, 985, 1016, 1020,1036, 1037, 1038, 1039, 1040, 1045, 1046, 1047, 1053, 1054, 1055, 1056, 1057, 1058, 1061, 1062, 1063, and 1070.

Mr. BYRD. Mr. President, all of the calendar items identified by the distinguished acting Republican leader have been cleared by all Members on this side of the aisle and we are ready to proceed.

Mr. STEVENS. I appreciate the agreement.

Mr. President, I ask unanimous consent that the calendar items I have identified be considered en block and adopted en bloc, and that all committee reports and preambles and title amendments be considered and agreed to en bloc.

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

CHILD INJURY PREVENTION ACT

The Senate proceeded to consider the bill (S. 2648) to improve the public health through the prevention of childhood injuries, which had been reported from the Committee on Labor and Human Resources, 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. 2648

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 **[**"Child Injury**]** *"Injury* Prevention Act of 1986".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that:

(1) Injury is one of the principal public health problems in America, and causes over 140,000 deaths per year.

(2) Injury rates are particularly high for **[**children.**]** *children and the elderly.*

(3) Injury causes 50 percent of all deaths for children over the age of one year and two-thirds of all deaths for children over the age of 15 **[**years.**]** *years, and is the leading cause of death for individuals under the age of 44 years. Individuals over the age of 65 years have the highest fatality rates for many injuries.*

[(4) Injuries resulting from consumer products are a particularly serious problem. In 1985, over 5,000,000 children suffered injuries resulting from consumer products which were serious enough to require visits to hospital emergency rooms.**]**

[(5)**]** *(4)* Injury control has not been given high priority in the United States, and the research being conducted on injury control and the number of personnel involved in injury control activities are not adequate.

(b) The purposes of this Act are—

(1) to promote research into the causes, [mechanics,] diagnosis, treatment, prevention, and control of injuries and rehabilitation from injuries;

(2) to promote cooperation between specialists in fields involved in injury research; and

(3) to promote coordination between Federal, State, and local governments and public and private entities in order to achieve a reduction in deaths from injuries.

PUBLIC HEALTH RESEARCH AND ACTIVITIES RELATING TO INJURY CONTROL

SEC. [2] *3.* Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART J—INJURY CONTROL

"RESEARCH

"SEC. 391. (a) The Secretary, through the Director of the Centers for Disease Control, shall—

"(1) conduct, and give assistance to public and nonprofit private entities, scientific institutions, and individuals engaged in the conduct of, research relating to the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries; and

"(2) make grants to public and nonprofit private entities (including academic institutions, hospitals, and laboratories) and individuals for the conduct of such research.

"(b) The Secretary, through the Director of the Centers for Disease Control, shall collect and disseminate, through publications and other appropriate means, information concerning the practical applications of research conducted or assisted under subsection (a).

"CONTROL ACTIVITIES

"SEC. 392. (a) The Secretary, through the Director of the Centers for Disease Control, shall—

"(1) assist States and political subdivisions of States in activities for the prevention of injuries; and

"(2) encourage regional activities between States designed to reduce injury rates.

"(b) The Secretary, through the Director of the Centers for Disease Control, may—

"(1) enter into agreements between the Service and public and private community health agencies which provide for cooperative planning of activites to deal with problems relating to injuries and injury control; and

"(2) work in cooperation with Federal, State, and local agencies to promote injury control.

"STUDY

"SEC. 393. By January 1, [1988,] *1989,* the Secretary, through the Director of the Centers for Disease Control, shall prepare and transmit to the Congress a report analyzing the incidence and causes of childhood injuries in the United States and containing recommendations for such legislation with respect to injury control as the Secretary considers appropriate.

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 394. (a) To carry out [section 391,] *sections 391 and 392,* there are authorized to be appropriated [$5,000,000] *$10,000,000* for each of the fiscal years [1987,] 1988, [and 1989.] *1989, and 1990.* Of the amounts appropriated under this [subsection] *section* for any fiscal year, not more than 20 percent may be used for Federal administrative expenses to carry out such section for such fiscal [year.] *year.*".

[(b) To carry out section 392, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of the amounts appropriated to under this subsection for any fiscal year, not more than 20 percent may be used for Federal administrative expenses to carry out such section for such fiscal year.".]

The PRESIDING OFFICER. The bill is before the Senate and 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 (S. 2648) was ordered to be engrossed for a third time, read the third time, and passed.

The title was amended so as to read "A bill to improve the public health through the prevention of injuries."

ENTRY OF NONIMMIGRANT ALIEN FISHING CREWS INTO GUAM

The bill (H.R. 2224) to amend the Immigration and Nationality Act to permit nonimmigrant alien crewmen on fishing vessels to stop temporarily at ports in Guam, was considered, ordered to a third reading, read the third time, and passed.

EXEMPTION OF CERTAIN ACTIVITIES FROM ANTITRUST LAWS

The Senate proceeded to consider the bill (S. 2323) to exempt certain activities from provisions of the antitrust laws, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause, and insert the following:

That (a) actions specified in section 2 shall be exempt from certain provisions of the antitrust laws of the United States.

(b) For purposes of this Act—

(1) "antitrust laws" has the meaning given such term in the first section of the Clayton Act, and the Federal Trade Commission Act;

(2) "person in the television industry" means a person who is the chief executive officer of a television network or of an entity which produces programming for television distribution, including theatrical motion pictures, and the presidents of the National Cable Television Association, the Association of Independent Television Stations, Inc., the National Association of Broadcasters and the Motion Picture Association of America, or their designees; and

(3) "telecast" means any program broadcast by a broadcast station or transmitted by a cable system.

SEC. 2. The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry pursuant to the development and dissemination of voluntary guidelines designed to alleviate the negative impact of violence in telecast material.

SEC. 3. (a) The exemption provided in section 2 shall not apply to any joint understanding, action, or agreement which results in a boycott of any other person in such industry.

(b) The exemption provided in section 2 shall terminate on the date 36 months after the date of enactment of this Act.

The amendment was agreed to.

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

TENNESSEE WILDERNESS ACT

The bill (H.R. 5166) to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes, was considered.

Mr. SASSER. Mr. President, I would like to thank the leadership on both sides of the isle for allowing this important bill, H.R. 5166, to be brought up today.

H.R. 5166, the Tennessee Wilderness Act of 1986, is the House companion bill to S. 2685, which was introduced by myself and Senator GORE in July. With one technical exception, the two bills are identical. The one change made in the House bill relates to maintenance of the Appalachian Trail and its shelters in wilderness areas. In order to conform with similar wilderness legislation, language on management of the Appalachian Trail was deleted, and substituted with report language. The report language provides for the continued maintenance of the trail and the existing shelters.

Last week, the Committee on Agriculture, Nutrition, and Forestry held a hearingon S. 2685. Both I and my colleague, Senator GORE—the two sponsors of the bill—testified in support of this legislation. Testimony was also received from the U.S. Forest Service, the Wilderness Society, and the Tennessee chapter of the Sierra Club, all of whom voiced their strong support for the measure.

The Tennessee Wilderness Act of 1986 is indeed a consensus bill. It has bipartisan support, and was passed by the House on September 22 by voice vote. It ratifies the wilderness recommendations made by the Forest Service in the final plan for the Cherokee National Forest. It reflects years of hard work and dedication by many Tennesseans who care deeply about the use and future of their national forests. And it reflects tremendous effort on the part of the Forest Service, which is to be commended for developing such successful recommendations.

H.R. 5166 designates 33,735 acres of the Cherokee National Forest as wilderness. It will add six outstanding natural areas to the National Wilderness Preservation System, and will provide the northern portion of the Cherokee National Forest with its first designated wilderness. It will also provide the logical conclusion to the wilderness debate begun by myself and the former distinguished majority leader, Senator Baker, 2 years ago with the introduction and passage of the Tennessee Wilderness Act of 1984.

Protection of these wild lands will preserve a small portion of our vanishing eastern roadless areas. Preservation of these lands will allow wildlife and plant species dependent on undisturbed habitat the wilderness they require. It will ensure recreational solitude for those who seek it. And given that the Forest Service has found existing wilderness areas in the southern Appalachian region to be at or above their recreation-use capacity, I believe it is particularly important to add these lands to the wilderness system.

This bill also releases nonwilderness areas from further wilderness consideration for the life of the initial forest plan. It therefore permits multiple-use management of these lands, and assures the availability of adequate timber supplies for local industry. Yet, it permits consideration of wilderness designation in future planning cycles, thus leaving the option of future wilderness designation open to future generations of Cherokee Forest users.

In the report accompanying H.R. 5166, there are two additional matters of importance to east Tennesseans; one concerning a proposed road between the communities of Butler and Blue Spring, and the other concerning a possible land transfer between the Forest Service and Unicoi County. As I stated in my testimony to the Agriculture Committee, this report language was included to address the concerns of citizens in these communities, and I believe this noncontroversial language will allay the concerns of all parties involved.

Mr. President, enactment of this bill, H.R. 5166, will lay to rest an important component of the Cherokee final plan. By resolving the wilderness debate, we will provide a clearer path to resolution of the other issues at stake in the Cherokee Forest planning process. While there are other roadless areas in the Cherokee National Forest worthy of wilderness designation, I am hopeful that we can manage some of these other lands in a way which will not exclude their future consideration for wilderness designation.

Passage of this legislation in the 99th Congress will bring the planning process for the Cherokee National Forest one step closer to completion. It will also permanently protect 33,735 acres of preeminent wilderness in the Cherokee National Forest—not only for the enjoyment of ourselves and our children, but for the benefit of many generations of Americans to come. I urge my colleagues to support this important legislation.

Mr. GORE. Mr. President, I am extremely pleased that we have now reached the point of the final passage of legislation that my colleague, Senator SASSER, and I cosponsored in the Senate, the "Tennessee Wilderness Act of 1986" (H.R. 5166). This represents the culmination of years of work by many Tennesseans to secure permanent wilderness protection for the most deserving of the remaining roadless areas on the Cherokee National Forest. I congratulate all the individuals who have had a hand in this long process. I also commend the Forest Service for its role in developing an excellent package of wilderness recommendations through the forest planning process. The recommendations gained the support of a wide spectrum of environmental and conservation groups in Tennessee.

All these lands provide outstanding opportunities for solitude and recreation in a beautiful natural setting, and offer protection for rare plant and animal species. They help preserve an ecological diversity that becomes increasingly important as habitats on surrounding lands are fragmented or destroyed by development. Also, existing wilderness areas in the southern Appalachian region are reported by the Forest Service to be at or above their recreation-use capacity and that use continues to grow.

The Tennessee Wilderness Act of 1986 adds 33,735 acres of the Cherokee National Forest to the National Wilderness Preservation System. The bill designates the first wilderness areas in the northern portion of the Cherokee. The legislation brings the total amount of wilderness on the forest to nearly 67,000 acres, or about 11 percent of the forest's total area. At the same time, the bill makes other lands available for multiple use management. There will be sufficient timber supplies left outside of wilderness areas to meet the needs of local industry.

I ask my colleagues to give this bill their unanimous consent.

The bill was ordered to a third reading, read the third time, and passed.

CHARLES McC. MATHIAS, JR., NATIONAL STUDY CENTER FOR TRAUMA AND EMERGENCY MEDICAL SYSTEMS

The joint resolution (H.J. Res. 210) designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

AMERICAN FOLKLIFE CENTER AUTHORIZATION

The bill (H.R. 4545) to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

AUTHORIZING THE PRINTING OF A REPORT AS A SENATE DOCUMENT

The resolution (S. Res. 482) authorizing the printing of the report entitled "Highway Bridge Replacement and Rehabilitation Program, Seventh Annual Report to Congress" as a Senate document, was considered, and agreed to; as follows:

S. RES. 482

Resolved, That the annual report of the Secretary of Transportation to the Congress of the United States in compliance with section 144(i) of title 23, United States Code entitled, "Highway Bridge Replacement and Rehabilitation Program, Seventh Annual Report to Congress" be printed as a Senate document.

SEC. 2. There shall be printed three hundred additional copies for the use of the Committee on Environment and Public Works.

GRATUITY TO EUGENE A. BUNDY

The resolution (S. Res. 496) to pay a gratuity to Eugene A. Bundy, was considered, and agreed to; as follows:

S. RES. 496

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Eugene A. Bundy, widower of Carolyn E. Bundy, an employee of the Senate at the time of her death, a sum equal to seven months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

GRATUITY TO DAVID K. STOKELY

The resolution (S. Res. 497) to pay a gratuity to David K. Stokely, was considered, and agreed to; as follows:

S. RES. 497

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to David K. Stokely, son of Wilma K. Stokely, an employee of the Senate at the time of her death, a sum equal to eight months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

AMENDING RULE XXXV OF THE STANDING RULES OF THE SENATE

The resolution (S. Res. 498) to amend rule XXXV of the Standing Rules of the Senate, was considered, and agreed to; as follows:

S. RES. 498

Resolved, That the last sentence of paragraph 4(b) of rule XXXV of the Standing Rules of the Senate is amended by striking

out "Prior to the beginning of any such program, the" and inserting in lieu thereof "The".

REPEAL OF PUBLIC LAW 87-186

The bill (S. 2448) to repeal Public Law 87-186 relative to the National Armed Forces Museum Advisory Board of the Smithsonian Institution, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2448

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 87-186, an Act to establish a National Armed Forces Museum Advisory Board of the Smithsonian Institution to authorize expansion of the Smithsonian Institution's facilities for portraying the contributions of the Armed Forces of the United States, and for other purposes, approved August 30, 1961, is hereby repealed.

REAPPOINTMENT OF MURRAY GELL-MANN AS A CITIZEN REGENT OF THE SMITHSONIAN INSTITUTION

The joint resolution (S.J. Res. 268) to provide for the reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S.J. RES. 268

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the vacancy in the Board of Regents of the Smithsonian Institution, of the class other than Members of Congress, which will occur by the expiration of the term of Murray Gell-Mann of California on July 25, 1986, be filled by the reappointment of the present incumbent. The appointment is for a term of six years and shall take effect on the day after the current term expires.

GRATUITY TO MARJORIE A. PATTISON

The resolution (S. Res. 499) to pay a gratuity to Marjorie A. Pattison, was considered, and agreed to; as follows:

S. RES. 499

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Marjorie A. Pattison, widow of Thomas R. Pattison, an employee of the Senate at the time of his death, a sum to equal one year's compensation at the position gross rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

NATIONAL BURN AWARENESS WEEK

The joint resolution (S.J. Res. 410) to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 410

Whereas the burn problem in the United States is the worst of any industrialized nation in the world;

Whereas burn injuries are one of the leading causes of accidental death in the United States;

Whereas every year approximately two million people are victims of burn injury in the United States;

Whereas of these injuries, seventy thousand are hospitalized and account for nine million disability days annually;

Whereas approximately twelve thousand people die from burn injuries;

Whereas deaths resulting from burn injuries increased in 1985;

Whereas the rehabilitative and psychological impact of burns are devastating;

Whereas children, the elderly, and the disabled are most likely to suffer serious burns;

Whereas it is estimated that approximately 75 percent of all burns could be prevented by proper education of children and adults; and

Whereas there is a need for an effective national program that deals with all aspects of burn prevention: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing February 9, 1987, and ending February 15, 1987, is designated as "National Burn Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe such week with appropriate programs and activities.

FREEDOM OF INFORMATION DAY

The joint resolution (S.J. Res. 414) to designate March 16, 1987, as "Freedom of Information Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 414

Whereas a fundamental principle of our Government is that a well-informed citizenry can reach the important decisions that determine the present and future of the Nation;

Whereas the freedoms we cherish as Americans are fostered by free access to information;

Whereas many Americans, because they have never known any other way of life, take for granted the guarantee of free access to information that derives from the First Amendment to the Constitution of the United States;

Whereas the guarantee of free access to information should be emphasized and celebrated annually; and

Whereas March 16 is the anniversary of the birth of James Madison, one of the Founding Fathers, who recognized and supported the need to guarantee individual rights through the Bill of Rights: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 16, is designated as "Freedom of Information Day", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local government agencies and the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

NATIONAL PRODUCTIVITY IMPROVEMENT WEEK

The joint resolution (S.J. Res. 417) designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 417

Whereas the challenge of maintaining a sound economy needs continued diligence from the private and public sectors of our free society;

Whereas a principal force in driving a sound economy is a strong level of productivity in the output of both products and services;

Whereas the attainment of continually improved productivity as a conscientious objective throughout our economy will help protect and advance the quality of life of all American citizens;

Whereas the creation of productive ideas and the desire to excel are traits of the American workforce which sufficiently motivated can dramatically and favorably influence productivity; and

Whereas public awareness is a key element in increasing productivity consciousness and motivating its widespread development: Now, therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of spreading the message that productivity improvement should be a primary goal in business, industry and government, the week of January 25, 1987, is designated "National Productivity Improvement Week." The President is requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

NATIONAL WOMEN IN SPORTS DAY

The joint resolution (S.J. Res. 418) to designate February 4, 1987, as "National Women in Sports Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 418

Whereas women's athletics is one of the most effective avenues available through which women of America may develop self-

discipline, initiative, confidence, and leadership skills;

Whereas support and fitness activity contributes to emotional and physical well-being and women need strong bodies as well as strong minds;

Whereas the history of women in sports is rich and long, but there has been little national recognition of the significance of women's athletic achievements;

Whereas the number of women in leadership positions of coaches, officials, and administrators has declined drastically over the last decade and there is a need to restore women to these positions to ensure a fair representation of women's abilities and to provide role models for young female athletes;

Whereas the bonds built between women through athletics help to break down the social barriers of racism and prejudice;

Whereas the communication and cooperation skills learned through athletic experience play a key role in the athlete's contributions at home, at work, and to society;

Whereas women's athletics has produced such winners as Flo Hyman, whose spirit, talent, and accomplishments distinguished her above others and exhibited for all of us the true meaning of fairness, determination, and team play;

Whereas early motor-skill training and enjoyable experiences of physical activity strongly influence life-long habits of physical fitness;

Whereas the athletic opportunities for male students at the collegiate and high school level remain significantly greater than those for female students; and

Whereas the number of funded research projects focusing on the specific needs of women athletes is limited and the information provided by these projects is imperative to the health and performance of future women athletes; Now, therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That February 4, 1987, is hereby designated as "National Women in Sports Day", and the President is authorized and requested to issue a proclamation calling upon local and State jurisdictions, appropriate Federal agencies, and the people of the United States to observe the day with appropriate ceremonies and activities.

RECOGNITION OF VISIT TO NEUFCHATEL, SWITZERLAND, AS A GESTURE OF GOODWILL

The concurrent resolution (S. Con. Res. 130) to recognize the visit by the descendents of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October 1986 as an international gesture of good will, was considered, and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 130

Whereas in 1732 Jean Pierre Purry, under the auspices of the British authorities, founded the town of Purrysburg in the lower south eastern portion of South Carolina, on the Savannah River;

Whereas Colonel Purry, a native of Neufchatel, Switzerland, had promoted the colonization of Carolina and gathered a group of settlers from among the industrious and diligent Swiss;

Whereas the town of Purrysburg, South Carolina, was originally chartered as Swiss Quarter and prospered during its early years, boasting strong commercial, civil, religious, and military activities;

Whereas during the Revoluntionary War, Purrysburg served as a headquarters for General Benjamin Lincoln;

Whereas President George Washington shared the Huguenot descent of the Purrysburg settlers and visited the town during a tour of the Southern States;

Whereas Purrysburg was abandoned after the Revolutionary War as the result of the growth of coastal cities such as Charleston; and

Whereas the descendents of the original settlers of Purrysburg, South Carolina, are visiting Neufchatel, Switzerland in October of 1986: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress recognizes the visit by the descendants of the original settlers of Purrysburg, South Carolina, to Neufchatel, Switzerland in October of 1986 as an international gesture of goodwill.

RECOGNIZING MR. EUGENE LANG FOR HIS CONTRIBUTIONS TO THE EDUCATION AND LIVES OF DISADVANTAGED YOUTH

The Senate proceeded to consider the resolution (S. Res. 435) to recognize Mr. Eugene Lang for his contributions to the education and the lives of disadvantaged young people, which had been reported from the Committee on the Judiciary with an amendment in the nature of a substitute.

The Senate proceeded to consider the resolution.

Mr. MOYNIHAN. Mr. President, I am pleased that the Senate has recognized the I Have a Dream Foundation for the important contributions it is making to the lives and the education of young people across the country. The foundation is providing technical assistance to individuals, businesses and community groups that wish to provide financial support to enable disadvantaged teenagers to attend college. This spirit of generosity and concern is most gratifying.

The I Have a Dream Foundation was founded by Mr. Eugene Lang, who in 1981 gave the graduation address to a class of sixth graders at his old elementary school in east Harlem. He promised them that if they would only graduate from high school, he would send them to college. As many as 50 of the 51 students will graduate next spring, in an area of Harlem where the dropout rate approaches 75 percent. Mr. Lang committed his money and his time, and the commitment has borne fruit.

Mr. Lang's idea has spread through New York City and is now crossing the country, with the foundation's help. Twenty other cities have organized programs or plan to. The foundation will bring an opportunity to thousands of school children, an opportunity to gain a college education and a better life than they might otherwise have. The work of the I Have a Dream Foundation will spread an idea that brings hope and education to disadvantaged young people. I commend Mr. Lang for the idea, and the foundation for nurturing it.

Mr. LEVIN. Mr. President, Eugene Lang is an extraordinary person. He has been a quiet and effective "doer" for decades. I came to know him because we were both graduated from Swarthmore College. Our paths crossed because of his activities as Swarthmore's greatest modern supporter. He gave and gave of himself, both his time and his money. That has been the case with so many causes as he, in an unassuming way, determined to make a difference in this world. His extraordinary gesture for which he is, in part, being honored here today is symbolic of the way he does things. His own exemplary act of generosity toward P.S. 121 in New York City has touched a responsive chord across the land and now a number of individuals and companies have decided to follow his lead. May it shine for a long, long time.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

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

The resolution, as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The resolution (S. Res. 435), as amended, and the preamble, as amended, are as follows:

S. RES. 435

Whereas the number of young people who fail to graduate is unacceptable in many high schools, especially in urban areas; and

Whereas failure to graduate deprives these young people of many employment opportunities and further educational opportunities; and

Whereas many disadvantaged young people are never encouraged to pursue a college education and are unaware of scholarship opportunities; and

Whereas the I Have a Dream Foundation is assisting people across the country in utilizing Eugene Lang's idea of providing college tuitions to disadvantaged school children who agree to finish high school; and

Whereas the success of the program in New York City has inspired people in Baltimore, Chicago, Boston Jersey City, Washington, Cleveland, Detroit, Miami, Orlando, Atlanta, Birmingham, Grand Rapids, New Orleans, Denver, San Antonio, Phoenix, Los Angeles, San Francisco, Seattle, Dallas, and Portland to adopt it: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) The I Have a Dream Foundation is to be recognized for disseminating the assistance necessary to replicate an innovative and successful approach to keeping disad-

vantaged teen-agers in high school and enabling them to attend college.

(2) Americans are encouraged to use their time and resources to give disadvantaged young people educational opportunities they do not normally have.

The title was amended so as to read: "A resolution to recognize the I Have A Dream Foundation for its contributions to the education and the lives of disadvantaged young people."

NATIONAL DAY OF EXCELLENCE IN HONOR OF THE "CHALLENGER" SPACE SHUTTLE CREW

The joint resolution (H.J. Res. 588) commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the space shuttle *Challenger*, was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL ADULT DAY CARE CENTER WEEK

The joint resolution (H.J. Res. 617) to designate the week beginning September 28, 1986, as "National Adult Day Care Center Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

CRACK/COCAINE AWARENESS MONTH

The joint resolution (H.J. Res. 678) to designate October 1986, as "Crack/Cocaine Awareness Month," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL FAMILY CAREGIVERS WEEK

The joint resolution (H.J. Res. 555) to designate the week beginning November 24, 1986, as "National Family Caregivers Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the votes by which the various measures were agreed to or passed.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. I say to my friend I do not have any statements for that group of bills.

Mr. BYRD. I thank the distinguished Senator.

TO AMEND TITLE 11, UNITED STATES CODE, THE BANKRUPTCY CODE—H.R. 5490

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 5490 dealing with debtors in bankruptcy, and I ask for its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5490), to clarify the current meaning of section 1113 relating to the rejection of collective bargaining agreements by debtors in bankruptcy.

The Senate proceeded to consider the bill.

□ 1910

AMENDMENT NO. 3211

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Senator METZENBAUM, Senator THURMOND, and others.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. METZENBAUM, Mr. THURMOND, Mr. HEINZ, Mr. GLENN, Mr. SPECTER, Mr. DENTON, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, Mr. ROCKEFELLER, Mr. BOSCHWITZ, and others, proposes an amendment numbered 3211.

Mr. BYRD. 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 after the enacting clause and insert in lieu thereof the following:

SECTION 1. Notwithstanding any provision of chapter 11 of title 11, United States Code, the trustee shall pay benefits until May 15, 1987, to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

SEC. 2. This Act is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases under which an order for relief is entered under chapter 11 of title 11, United States Code, after October 2, 1986, which such case is a case under chapter 11.

Mr. METZENBAUM. Mr. President, this amendment is identical to one adopted on the continuing resolution earlier today. It provides an additional protection to retirees of companies filing in bankruptcy.

This measure is not intended to address the issue of whether or not a pension plan is an executory contract.

I ask unanimous consent that a letter from Congressman CLAY be inserted at this point in the RECORD.

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

COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, September 30, 1986.

Hon. HOWARD M. METZENBAUM,
Russell Senate Office Building,
Washington, DC.

DEAR HOWARD: Yesterday the House of Representatives passed H.R. 5490, a bill that amends section 1113(f) of the Bankruptcy Code to clarify that retiree benefits (such as health and life insurance) set forth in collective bargaining agreements are treated as any other benefits set forth in collective bargaining agreements.

As you know, a few months ago Congress enacted the Single-Employer Pension Plan Amendments Act of 1985 (Title XI of the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272). As one of the Senate Labor and Human Resources conferees on that Act, you will recall that during the conference an issue arose as to whether the distress criteria for termination of a single-employer pension plan could be met by the contributing sponsors and members of their controlled groups filing reorganization in bankruptcy petitions under Chapter 11. Under the House bill, such a filing did not meet the criteria for a distress termination of a pension plan. Under the Senate amendment, if the Bankruptcy Court approved the plan termination, the filing of a Chapter 11 petition would have enabled a pension plan to qualify for a distress termination, provided certain other conditions were met. In the context of our conference discussion on this point, the question arose as to when or whether pension plans might be executory contracts subject to the provisions of section 1113(f) of the Bankruptcy Code. Since full and careful consideration of this question had never been undertaken the Conference Agreement specifically stated that, "The Conferees take no position on when or whether a pension plan is an executory contract." H. Rept. 99-453, December 19, 1985, at page 575.

The legislative history of H.R. 5490 indicates that the purpose of the bill is to assure that, in a Chapter 11 bankruptcy proceeding, retiree benefits, such as health and life insurance, under collective bargaining agreements are treated in the same procedural manner as other collectively bargained benefits. Of course, in passing this legislation amending the Bankruptcy Code to clarify the narrow issue of procedural treatment of retiree benefits, Congress did not intend to address the issue left open in the Single-Employer Pension Plan Amendments Act of 1985 as to when or whether employee benefit plans generally, and pension plans specifically, might be executory contracts.

As the author of the Senate companion measure to H.R. 5490, I wanted to bring this matter to your attention because I am certain that neither you, nor the other authors of this legislation, had any intention of creating legislative history that might be erroneously construed as impliedly contradicting the agreement reached by the conferees in the Single-Employer Pension Plan Amendments Act.

I congratulate you on your tireless efforts on behalf of retirees, especially those whose health and life insurance benefits are in

jeopardy as a result of employer bankruptcy.

Sincerely,

WILLIAM L. CLAY,
Chairman.

Mr. METZENBAUM. Mr. President, I concur with the position of the chairman of the Subcommittee on Labor Management Relations. The position taken by the conferees on the single-employer pension plan amendments is not contradicted by this measure.

I urge adoption of this amendment.

Mr. THURMOND. Mr. President, I rise to support the substitute amendment to H.R. 5490. This amendment is identical to the language which Senator METZENBAUM, Senator HEINZ, and I earlier added to the continuing resolution. My statement there fully explains the intent of this language which I have helped to draft. In the interest of time, let me say, this substitute amendment provides temporary protection for some retiree benefits. However, in no way is the language of this amendment intended, nor should it be construed, to affect the interpretation of section 1113 of the Bankruptcy Code.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 3211) was agreed to.

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 of the amendments and the third reading of the bill.

The amendments were to be engrossed and the bill to be read a third time.

The bill was read a third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

PATENTED PROCESSES AND THE PATENT COOPERATION TREATY

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of H.R. 4899, the process patents bill being held at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4899) to amend title 35, United States Code, with respect to patented processes and the patent cooperation treaty.

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

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

AMENDMENT NO. 3212

(Purpose: To protect patent owners from importation into the United States of goods made overseas by use of a United States patented process)

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of the Senator from Maryland [Mr. MATHIAS] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. MATHIAS, proposes an amendment numbered 3212.

Mr. STEVENS. Mr. President, I ask unanimous consent that the amendment not be read.

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

The amendment is as follows:

Strike out all of title I and insert in lieu thereof the following:

TITLE I—PATENTED PROCESSES

SEC. 101. This title may be cited as the "Process Patent Amendments Act of 1986".

SEC. 102. (a) Section 154 of title 35, United States Code, is amended by inserting after "United States," the following: "and, if the invention is a process, of the right to exclude others, to the extent provided in section 271(a)(2), from using or selling products produced thereby throughout the United States, or importing products produced thereby into the United States,".

(b) Section 271 of title 35, United States Code, is amended by—

(1) inserting "(1)" after "(a)";

(2) adding at the end of subsection (a), the following:

"(2) If the patented invention is a process, whoever without authority uses or sells within, or imports into, the United States during the term of the patent therefor a product produced by such process, infringes the patent. A product will no longer be considered to have been produced by a patented process once it has been materially changed by subsequent steps or processes.".

(c) Section 287 of title 35, United States Code, is amended by—

(1) striking out "Limitation on damages" in the section heading and inserting in lieu thereof "Limitation on damages and other remedies";

(2) inserting "(a)" before "Patentees,"; and

(3) adding at the end thereof the following new subsection:

"(b)(1) An infringer under section 271(a)(2) shall be subject to all of the provisions relating to damages and injunctions set forth in this title except to the extent that those remedies are limited by this subsection or section 3. The limitations on remedies set forth in this subsection shall not be available to any party who—

"(A) engaged in the actual practice of the patented process;

"(B) is owned or controlled by the party who engaged in the actual practice of the patented process;

"(C) owns or controls the party who engaged in the actual practice of the patented process;

"(D) having made a request for disclosure as provided in subsection (b)(5), fails to notify its supplier of patents identified in response to the request and to instruct its supplier to refrain from infringement of such patents; or

"(E) had knowledge prior to the infringement that a patented process was used to produce the product whose importation, use, or sale constituted the infringement.

"(2) No damages shall be recovered by the patentee unless the infringer had notice of the infringement and continued to infringe thereafter. Damages may be recovered only for infringement that occurred after notice of infringement.

"(3) No remedy may be obtained during the eighteen months after the date of notice for retail sales of a normal volume of products in inventory or on order at the time of notice, obtained from a party in the United States who did not use the patented process, provided the retailer discloses to the patentee, within 30 days from notice, the identity and location of the party from whom the products were purchased. Normal quantity of products in inventory and on order shall be determined by previous business practices, and could include units of a product ordered prior to notice and received within a period not to exceed eighteen months after notice.

"(4) The remedy for the importation, use, or sale of units of the infringing product ordered prior to notice and imported, used, or sold in a manner consistent with the normal business practices of the infringer during the six months after the date of notice shall be limited to a reasonable royalty. The limitation in this subparagraph shall not be available to any party who failed to make a request for disclosure, as defined in subparagraph (5), of the party asserting infringement or its licensee.

"(5)(A) For purposes of this paragraph, a 'request for disclosure' means a written request made to a party then engaged in the manufacture of a product to identify all process patents owned by or licensed to that party as of the time of the request that could reasonably be asserted to be infringed under section 271(a)(2) if that product were imported into, or sold or used in, the United States by an unauthorized party. A request for disclosure is further limited to a request—

"(i) made by a party regularly engaged in the sale of the same type of products as the party to whom the request is directed, or a request which includes facts showing that the requester plans to engage in the sale of such products; and

"(ii) made prior to such party's first importation, use, or sale of units of the product produced by an infringing process and prior to notice of infringement.

"(B) In any action where the infringer made a request for disclosure from the party asserting infringement and the infringed patent was not identified within 60 days, the remedy for the importation, use, or sale of units of the infringing product which are imported, used, or sold by the infringer in a manner consistent with the normal business practices of the infringer during the eighteen months after the date of notice shall be limited to a reasonable royalty.

"(C) For the purposes of the limitations on remedies in this subsection—

"(i) no party may make more than one request for disclosure of the same party for the identification of process patents for producing a particular product; and

"(ii) no party who has received the benefit of the limitations of this paragraph or para-

graph (4) with respect to the infringement of one process patent shall be entitled to that benefit in the event of a subsequent infringement of any process patent for producing the same product owned by the same patentholder at the time of the first infringement.

"(6) For the purposes of the remedy limitations in subsection (b), notice or infringement means actual knowledge, or receipt of notification, that a product was produced by a patented process without authorization of the patentee. A notification shall constitute notice of infringement only if it is in writing and sets forth facts which are sufficient to establish that there is a substantial likelihood that the product was made by the infringing process. Filing an action for infringement shall constitute notice of infringement only if the pleadings or other papers filed in the action meet the requirements of a notification.".

(d) The table of sections for chapter 29 of title 35, United States Code, is amended by amending the item relating to section 287 to read as follows:

"287. Limitations on damages and other remedies; marking and notice.".

SEC. 103. (a) This title and the amendments made by this title shall apply only to products produced or imported after the date of enactment, and shall not abridge or affect the right of any persons or their successors in business to continue to use, sell or import any specific product already in substantial and continuous sale or use in the United States on July 1, 1986, or for which substantial preparation for such sale or use was made before such date, to the extent equitable for the protection of commercial investments made or business commenced in the United States before such date.

(b) This title and the amendments made by this title shall not deprive a patent owner of any other remedies available under section 271 of title 35, United States Code, section 337 of the Tariff Act of 1930, or any other provision of law.

SEC. 104. Beginning on the date one year after the date of enactment of this title and each year for 4 additional years thereafter, the Department of Commerce shall submit an annual report to the Congress on the effect of this title and the amendments made by this title, on the importation of ingredients to be used for manufacturing products in the United States in those domestic industries that submit formal complaints to the Department alleging that their legitimate sources of supply have been adversely affected.

SEC. 105. (a) Chapter 29 of title 35, United States Code, is amended by adding at the end thereof the following:

"§ 295. Presumption: product produced by patented process

"In actions alleging infringement of a process patent based on use, sale, or importation of a product produced by the patented process, if the court finds (1) that a substantial likelihood exists that the product was produced by the patented process and (2) that the claimant has made a reasonable effort to determine the process actually used in the production of the product and was unable so to determine, the product shall be presumed to have been so produced, and the burden of establishing that the product was not produced by the process shall be on the party asserting that it was not so produced.".

(b) The table of sections for chapter 29 of title 35, United States Code, is amended by adding after the item relating to section 294 the following:

"295. Presumption: product produced by patented process.".

Mr. MATHIAS. The Senate now has before it H.R. 4899, the Patent Equity Act, which passed the House last week and has been held at the desk here by unanimous consent.

The Patent Equity Act has two titles: The first would strengthen the U.S. patent laws protecting process patents, and the second would make changes in our patent law necessary for removing the U.S. reservation on chapter 2 of the Patent Cooperation Treaty, a step that will make it easier for U.S. inventors to obtain foreign patents and protect their inventions in other countries.

In accordance with the unanimous-consent request I made last week, I propose to substitute for title I of H.R. 4899 the text of S. 1543 as approved by the Senate Judiciary Committee on September 19, and to leave title II on the Patent Cooperation Treaty intact.

The purpose of the process patent legislation is to close a serious loophole in our patent laws. Current law prohibits unauthorized parties from using a patented process in the United States, but fails to protect against use of the process in another country followed by importation into and use or sale within the United States of the resulting products. Simply using the process in a foreign country where the U.S. inventor does not have a patent is perfectly legitimate; the measure we are considering prohibits only the subsequent importation, use and sale of the resulting products in this country, by declaring such acts to be an infringement of the U.S. patent on the process. The prohibition against importation, use or sale of such products applies not only to the foreign manufacturer who actually uses the process—and who may not be subject to the jurisdiction of the U.S. courts—but also to parties in the United States who purchase goods made by a patented process and import, use or sell them in this country. Under the bill, it will be incumbent on such purchasers to seek reliable, legitimate suppliers and to insist in their contracts that the supplier will come into the U.S. court if a process patent infringement action is brought, and prove that they made the goods by means of a noninfringing process. However, in order to protect purchasers in the United States who do not use the process, and who do not know the process by which the goods they purchase are made, the bill allows certain limitations on the remedies available against them under the patent law, provided they have acted in good faith in seeking to purchase legitimate, noninfringing goods.

Two classes of purchasers are eligible for these remedy limitations. Retailers who purchase from sources in the United States who do not use the patented process—so that the retailer is not in privity of contract with the party ultimately responsible for the infringement—are allowed a period of 18 months from the date of notice, during which they may sell inventory acquired or goods on order before notice with no liability for damages or injunctions. After this grace period, they would be fully liable for any acts of infringement under the bill. The second class of potential infringing purchasers consists of the importers, wholesalers, and distributors who deal directly or indirectly with the manufacturer who uses the patented process. Such purchasers are entitled under the bill to request a listing of process patents from manufacturers in the United States of a product the requester intends to purchase from a foreign source. The lists would then be passed on to a foreign manufacturer/supplier to ensure that it does not use a patented process in making the product. Having taken these precautions, if the importer/wholesaler/distributor subsequently is given notice by a patent holder who believes his process was used in making this product, then there would be a 6-month grace period following notice in which the damages would be limited to reasonable royalties and no injunction would be available. If the patent holder that brings the suit had failed to disclose the process patent in question in response to the request for disclosure, then the grace period is extended to 18 months. After the grace period, the defendant is again fully liable for acts of infringement. In either case, the purpose is to give the innocent infringing importer/wholesaler time to shift to a legitimate, noninfringing source without disrupting its business. The whole predisclosure and grace period mechanism is available only once for a given product. And again, these remedy limitations are available only for good-faith infringers who neither use the patented process nor know that they are purchasing goods made by a patented process. The grace periods should not be construed as a compulsory license, which implies an ongoing right of the licensee to do business without permission from the patent owner. Such a right has no place in U.S. patent law, and no such right is contemplated in the pending bill.

Other protections for innocent infringers include a more stringent standard of notice than is ordinarily required in product patent infringement cases, and a grandfather clause exempting business arrangements already entered into or subsequently prepared for as of July 1, 1986. With these protections, the two major opponents of earlier versions of the bill, the chain drug stores and the generic pharmaceutical industry, support the

version reported by the Senate Judiciary Committee.

Another important provision of the bill is the rebuttable presumption, shifting the burden of coming forward with evidence to the defendant if and when the plaintiff has made a reasonable but unsuccessful effort to ascertain the process used to make the product and has submitted adequate evidence to the court to establish a substantial likelihood that the product was made by his patented process.

This legislation is of enormous importance to American innovation and is supported by a wide range of American industries, including biotechnology, pharmaceuticals, industrial chemicals, and optical fibers. Let me mention here some of the Senators who deserve special credit for their efforts in developing the compromise that allowed us to move this legislation out of the Judiciary Committee: the chairman, Senator THURMOND; Senator LEAHY; Senator HATCH; and Senator DECONCINI. Let me also commend Senator LAUTENBERG, the original cosponsor of S. 1543, who testified in its favor before the committee last year, and who has contributed at every stage of our progress. Senator LAUTENBERG brings to our efforts the wisdom of firsthand experience with the complex problems we are trying to address in the process patent area.

There are some differences between the process patent legislation approved by the Senate Judiciary Committee and the version adopted by the House in H.R. 4899. Senate passage of this bill with my amendment will make it possible to work with the House to pass the best possible legislative approach to this serious shortcoming in our patent laws.

Title II of H.R. 4899 is the implementing legislation necessary for the withdrawal of our country's reservation on chapter 2 of the Patent Cooperation Treaty. The Senate version, S. 1230, of the same bill was reported by the Judiciary Committee last December; in the interests of moving expeditiously to a consensus with the House, I propose that we pass the House language today. The purpose of removing the reservation is to give U.S. patent holders more options and conveniences in pursuing patent applications in other countries. We are aware of no opposition to the bill.

The Patent Cooperation Treaty itself is an international patent agreement aimed at harmonizing the patent application procedures in member countries around the world. The treaty was ratified by the President with the advice and consent of the Senate in 1973 and eventually went into effect for our country in 1978.

At the time of the Senate's consideration of the treaty in 1973, we placed a reservation on chapter 2 owing to a belief that the procedures in that chapter would place an undue burden on our Patent and Trademark Office because of differences between the patent systems of the various countries that would participate in the treaty. Since that time, however, there has been tremendous progress, partly as a result of the treaty, in making those systems more compatible, and consequently we are now in a position to take advantage of the benefits of chapter 2.

Accordingly, the President has asked for the advice and consent of the Senate to withdraw the reservation on chapter 2. That request, Treaty Document 98-293, was recently ordered favorably reported by the Senate Foreign Relations Committee.

The substantive portions of the treaty, chapters 1 and 2, allow investors to file preliminary international patent applications prior to committing the money and technical resources necessary to formulate a formal patent application under these chapters, inventors are given more lead time and informal assessments of the prospect of obtaining a patent on their inventions in other countries.

Under chapter 1, an inventor receives an international search report citing all prior art that might have a bearing on the patentability of the invention, and also is allowed 20 months before having to decide whether to submit a formal, full-scale patent application.

If the inventor enters the chapter 2 procedures, the lead period is extended by 10 months, and the applicant is provided with an international preliminary examination report. Such reports are prepared by the patent office in one of the member countries, assessing whether the invention is novel, nonobvious and useful—the three standard criteria around the world for patentability. The preliminary examination report is also circulated to the patent offices in all the member countries, for their possible use if the inventor decides to proceed with a patent application in those countries.

There is a solid consensus that withdrawing our reservation and submitting to chapter 2 of the treaty is in the interests of promoting innovation in our country. As it stands, U.S. inventors have been the largest users by far of chapter 1 of the treaty. Furthermore, it is now universally agreed that entering chapter 2 would not place undue burdens on the U.S. Patent and Trademark Office. The European Patent Office has agreed to assist the U.S. Patent and Trademark Office during the transition period after we withdraw our reservation.

Mr. President, H.R. 4899 as amended will offer two responsible solutions to two troubling weaknesses in the existing patent system. I urge adoption of the amendment and of the bill as amended.

Mr. HATCH. Mr. President, I would like to commend the chairman of the Subcommittee on Patents, Copyrights and Trademarks, Senator MATHIAS, and each member of the subcommittee for their fine efforts in promoting process patent legislation over the past 4 years. We have all been concerned over the current lack of adequate protection against foreign process patent infringers. This bill closes that loophole.

The benefits from this bill will be immediate. By protecting our domestic process patent holders more jobs will be created and more exports will result. Equally as important, we gain credibility with our trading partners, whom we have urged to protect process patents, but without protecting our own.

This bill creates a new cause of action for process patent infringement by importation, use or sale of products resulting from a patented process. Current patent laws provide process patent protection only against unauthorized use of the process. The new protection would apply regardless of whether the unauthorized use of the process occurred domestically or abroad.

In creating this new protection against abuse of process patents, this bill does not, however, overlook the plight of an innocent domestic retailer. An innocent retailer would be a domestic importer who learns only after purchasing products from a foreign manufacturer that his supplier has infringed a patent. In such an instance, the innocent party is allowed to mitigate his damages and is allowed a grace period to dispose of the inventory acquired before notice of the violation. This bill strikes an appropriate balance between the need to protect process patents and the plight of innocent purchasers of infringing products.

In the past, differences among a diverse group have been difficult to reconcile. Many of those whose patents demanded protection were wedded to unrealistic principles. Conversely, many of those for whom a bill was unnecessary opposed legislation which could adversely affect their interests. I would like to commend the representatives of this diverse group—the unions, the textile industry, the biotech, high technology, chemical and traditional industrial groups, the generic and name brand drug companies and many others—I commend them all, for their foresight and courage to lay aside their selective interests and negotiate, early and long, and unite with the committee behind this compromise bill.

Mr. LAUTENBERG. Mr. President, I rise to support the amendment and the underlying bill. The amendment

embodies a revised version of S. 1543, the Process Patent Amendment of 1985, which I was pleased to develop and introduce with my colleague from Maryland [Mr. MATHIAS] last year.

The process patent amendments before the Senate will help protect American technology and spur investment in innovation. America's comparative advantage is its technology. We are leaders in the search for new ideals. But, we are not alone in that search.

To win the race for innovation, and to enjoy the fruits of victory, we must protect intellectual property, like patents. They reserve to the inventor, a chance to exploit his invention, to the exclusion of others. Without patent protection, people are free to steal an invention, avoid the risks of research and the frustrating failures that preceed success, but reap the harvest that the inventor sowed.

The legislation before us, would close a major gap in U.S. patent law dealing with patent of processes. Current law bars the unauthorized manufacture, use or sale of a patent in the United States. Where a product patent is at stake, and the product is copied abroad, infringement occurs when the product is actually used or sold in the United States. Where a process is at stake, and the U.S. process is copied abroad, there is no infringement of the process patent, even if the product made by the process is sold or used in the United States.

So, our current patent law does not reach the foreign pirating of our most innovative processes even when the products are shipped back to the United States. The bill before us would change that. It would make it a violation of U.S. patent law to import into, or to use or sell in the United States, a product made overseas using without permission, a U.S. patented process.

Japan, Britain, West Germany and France already have such protection for their inventors. Our legislation would bring American law in line.

Mr. President, my State is one of the Nation's centers for research and development. Billions of dollars are spent each year in the development of patented products and processes. Effective patent protection is critical to maintain that activity. It is important to the businesses that make the investments, and it is important to the people they employ. That's why both business and labor have called for process patent reform.

Mr. President, the pending amendment reflects a compromise between patent holders and those against whom these expanded rights would be enforced. Complaints were registered by retailers, importers, wholesalers, and distributors who would be infringers under the bill as we introduced it. They argued that their business would be impaired.

Retailers argued that they might innocently have purchased products, not knowing that they were made through the unauthorized use of a patented process. They argued that they should be able to sell off their inventory without penalty.

Importers of foreign ingredients used in U.S. manufacture, like generic drug manufacturers, argued that they would be in a poor position to ensure that their suppliers were not infringing. If their supplier were indeed infringing, they would need to find alternative suppliers and secure necessary regulatory approvals. All of that takes time.

Mr. President, the revised version of the bill addresses the concerns of these parties. It provides for the mitigation of damages, for prescribed periods. It provides a mechanism for parties to seek disclosure of patented processes, so that they might better avoid infringement.

Mr. President, I confess that I would have preferred the original version of our legislation. The compromise provides relief from damages that has no counterpart in our patent law. It is more accommodating than I think justified of parties, whether innocent or not, who are trading in stolen property, stolen intellectual property.

Nonetheless, on balance, the revised version still provides an important and significant expansion of rights to process patent holders. While I yet hold out hope that the bill may be improved further, the version before us would mark an important step in the enhancement of American intellectual property rights, the promotion of innovation and expansion of American jobs.

Mr. President, one final word. I would like to applaud the Senator from Maryland for his long and tireless efforts to move process patent reform. Senator MATHIAS will retire this year from the Senate and his post as chairman of the Subcommittee on Patents, Copyrights and Trademarks. The enactment of process patent legislation would be one of many tributes we could pay to the Senator.

I urge adoption of the amendment and passage of the bill.

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

The amendment (No. 3212) was agreed to.

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 of the amendment and third reading of the bill.

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

The bill was read the third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer [Mr. EVANS] appointed Mr. MATHIAS, Mr. THURMOND, Mr. HATCH, Mr. LEAHY, and Mr. METZENBAUM conferees on the part of the Senate.

Mr. STEVENS. Mr. President, I move to reconsider.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

COMPUTER FRAUD AND ABUSE ACT OF 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 4718, the Computer Fraud and Abuse Act, and I ask for its immediate consideration.

Mr. BYRD. Mr. President, there is no objection to discharge of the bill from the Judiciary Committee and there is no objection to its immediate consideration.

THE PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4718) to amend title 18, U.S. Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3213

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of the Senator from Virginia [Mr. TRIBLE] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. TRIBLE, proposes an amendment numbered 3213.

H.R. 4718 is amended by striking all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),";

(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18; and

(4) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of title 15,".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Codes, is amended—

(1) to read as follows:

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United Sates or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;"; and

(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.".

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECTS OF OFFENSES.—Paragraphs (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

"(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

"(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

"(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

"(A) such trafficking affects interstate or foreign commerce; or

"(B) such computer is used by or for the Government of the United States;".

(e) ELIMINATION OF SECTION SPECIFIC CONSPIRACY OFFENSE.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(f) PENALTY AMENDMENTS.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out "of not more than the greater of $10,000" and all that follows through "obtained by the offense" in subsection (c)(1)(A) and inserting "under this title" in lieu thereof;

(2) by striking out "of not more than the greater of $100,000" and all that follows through "obtained by the offense" in subsection (c)(1)(B) and and inserting "under this title" in lieu thereof;

(3) by striking out "or (a)(3)" each place it appears in subsection (c)(2) and inserting ", (a)(3) or (a)(6)" in lieu thereof;

(4) by striking out "of not more than the greater of $5,000" and all that follows through "created by the offense" in subsection (c)(2)(A) and inserting "under this title" in lieu thereof;

(5) by striking out "of not more than the greater of $10,000" and all that follows through "created by the offense" in subsection (c)(2)(B) and inserting "under this title" in lieu thereof;

(6) by striking out "not than" in subsection (c)(2)(B) and inserting "not more than" in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting "; and" in lieu thereof;

(8) by adding at the end of subsection (c) the following:

"(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph."; and

(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)".

(g) CONFORMING AMENDMENTS TO DEFINITIONS PROVISION.—Section 1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after "As used in this section" and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting "(1)" before "the term";

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

"(2) the term 'Federal interest computer' means a computer—

"(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

"(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

"(4) the term 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

"(H) the Securities Investor Protection Corporation;

"(5) the term 'financial record' means information derived from any record held by a financial institiution pertaining to a customer's relationship with the financial institution;

"(6) the term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter; and

"(7) the term 'department of the United States' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.".

(h) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITY EXCEPTION.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

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

The amendment (No. 3213) was agreed to.

The amendment (No. 3213) was agreed to.

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 of the amendment and the third reading of the bill.

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

The bill was read the third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

DEVELOPMENTAL DISABILITIES AWARENESS MONTH

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of House Joint Resolution 741, a joint resolution pronouncing "Developmental Disabilities Awareness Month," which is now being held at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 741) to designate March 1987 as "Developmental Disabilities Awareness Month."

The Senate proceeded to consider the joint resolution.

Mr. STEVENS. Mr. President, I ask for adoption of the joint resolution.

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 741) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

NATIONAL YEAR OF THE TEACHER

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 635, the "National Year of the Teacher."

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

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 635) to designate the school year of September 1986 through May 1987 as "National Year of the Teacher," and January 28, 1987, as "National Teacher Appreciation Day."

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 635) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

YEAR OF THE READER

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of House Joint Resolution 671, designating the "Year of the Reader," which is being held at the desk.

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

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 671) designated 1987 as "Year of the Reader".

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 671) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

FALSE CLAIMS AMENDMENTS ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1562.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1562) entitled "An Act to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the armed forces";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the armed forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, for an amount equal to consequential damages as set forth in subsection (b)(1) plus 2 times the amount of damages (other than such consequential damages) which the Government sustains because of the act of that person, and for the costs of a civil action brought to recover any such penalty or damages.

"(b) CALCULATION OF DAMAGES.—(1) For purposes of this section, consequential damages include damages which the United States would not have sustained but for—

"(A) the commission of any of the acts prohibited by subsection (a); or

"(B) entering into or making any contract or grant as a result, in any material part, of any false statement, record, or claim.

"(2) Any credits to which the defendant establishes entitlement may be deducted from the amount payable under subsection (a) only after the damages sustained by the United States have been doubled as set forth in subsection (a).

"(3) If any portion of the damages sustained by the United States under paragraph (1) is considered reasonably unforeseeable by the court, the court may reduce the total amount of damages payable under paragraph (1).

"(c) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information.

"(d) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.".

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. Subject to paragraph (5), an action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least

60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Subject to paragraph (5), before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5)(A) If the court finds that an action brought by a person under this subsection—

"(i) is based on specific evidence or specific information which the Government disclosed as a basis for allegations made in a prior administrative, civil, or criminal proceeding; or

"(ii) is based on specific information disclosed during the course of a congressional investigation or based on specific public information disseminated by any news media,

the court shall dismiss the action, unless subparagraph (B) applies.

"(B) The court shall not dismiss an action under subparagraph (A)—

"(i) if the Government proceeds with the action before the expiration of the 60-day period described in paragraph (2) or any extensions obtained under paragraph (3); or

"(ii) if the Government was aware of the evidence or information described in clause (i) or (ii) of subparagraph (A) for a period of at least 6 months before the person initiated the action, and the Government did not initiate a civil action on the matter involved within that 6-month period, or within such additional times as the court allows upon a showing of good cause.

"(C) The defendant must prove the facts warranting dismissal of a case to which this paragraph applies.

"(6) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action. The person bringing the action shall have a right to continue in the action with the same rights as those of a person permitted to intervene in an action under Rule 24(b) of the Federal Rules of Civil Procedure. The Government is not bound by an act of the person bringing the action. A motion by the Government to dismiss the action may not be granted unless the person bringing the action has been notified by the Government of the filing of the motion and unless the court has provided the person with the opportunity for a hearing on the motion.

"(2) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines after a hearing, including the opportunity for presentation of evidence, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

"(3) Upon a showing of the Government that certain actions of discovery by the person initiating the action would significantly interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(4) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action under this section, and the person bringing the action discloses relevant evidence, or relevant information, which the Government did not have at the time the action was brought, such person shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds, under subsection (b)(5)(A), to be based solely on evidence or information described in clause (i) or (ii) of that subsection, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the evidence or information and the role of a person in advancing the case to litigation. Any payment under this paragraph shall be made from the proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, vexatious, or brought solely for purposes of harassment.

"(e) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.".

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(f) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer in whole or in part because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of

action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.".

SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until 20 days after the date on which a copy of such demand has been served upon the person from whom the discovery was obtained.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executed copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL.—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person being examined, the person's counsel, the officer before whom the testimony is to be taken, and any other stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

"(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress.

"(D) Notwithstanding subparagraph (C), documentary material, answers to interrogatories, or transcripts of oral testimony obtained under a civil investigative demand issued under this section shall be disclosed to an agency of the United States if—

"(i) that agency files, in a district court of the United States in which petitions under subsection (j) may be filed, and serves upon the person named in the civil investigative demand and, in the case of an express demand for any product of dicovery, the person from whom such discovery was obtained, a petition requesting such disclosure;

"(ii) any person so served has an opportunity to be heard on the petition;

"(iii) the court finds that disclosure of the information involved is relevant to an investigation by the agency which it is authorized by law to conduct; and

"(iv) the court issues an order requiring such disclosure.

The provisions of paragraphs (5) and (6) of subsection (j) (relating to jurisdiction and applicability of the Federal Rules of Civil

Procedure) apply to petitions under this subparagraph.

"(E) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made by the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(7) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(k) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision

of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A).".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.
"3733. Civil investigative demands.".

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "five" and inserting "ten".

Amend the title so as to read: "An Act to amend title 31, United States Code, with respect to the fradulent use of public property or money.".

AMENDMENT NO. 3214

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendment with an amendment which I send to the desk on behalf of Senator GRASSLEY of Iowa.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. GRASSLEY, proposes an amendment numbered 3214.

Mr. STEVENS. I ask unanimous consent the amendment not be read.

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—";

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the Armed Forces of the United States";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the Armed Forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

"(b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

"(c) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(d) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subparagraphs (A) and (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954.".

SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

"§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to th dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

"(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

"(B) The Govenrment may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

"(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

"(i) limiting the number of witnesses the person may call;

"(ii) limiting the length of the testimony of such witnesses;

"(iii) limiting the person's cross-examination of witnesses; or

"(iv) otherwise limiting the participation by the person in the litigation.

"(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

"(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolus, clearly vexatious, or brought primarily for purposes of harassment.

"(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.)

"(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

"(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

"(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.".

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.".

SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of

action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.".

SEC. 6. FALSE CLAIMS JURISDICTION: CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

"§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3720 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3720.

"§ 3733. Civil investigative demands

"(a) IN GENERAL.—

"(1) ISSUANCE AND SERVICE.—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued for the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable under 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

"(b) PROTECTED MATERIAL OR INFORMATION.—

"(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standard applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supercedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) SERVICE; JURISDICTION.—

"(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

"(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering and executed copy of such demand or petition to the person; or

"(B) depositing and executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) DOCUMENTARY MATERIAL.—

"(1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES..—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The Officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, pesonally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimomy is taken shall promptly trnasmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual

other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answer to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by the person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigatiion,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) JUDICIAL PROCEEDINGS.—

"(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed.—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section to any court shall be punished as a contempt of the court.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under

subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(1) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A).".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.
"3733. Civil investigative demands.

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking "fined" and all that follows through "both" and inserting "imprisoned not more than five years and shall be subject to a fine in the amount provided in this title".

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

The amendment (No. 3214) was agreed to.

Mr. GRASSLEY. Mr. President, I introduced S. 1562, the False Claims Reform Act, on August 1, 1985, in the hope that my colleagues would join with me to produce a meaningful weapon against fraud. While persuading all of my colleagues throughout these past 14 months has not been an easy task, I am happy to say that within the next few days it is expected that both the House and the Senate will approve the most substantial reform of our fraud laws in more than 100 years.

S. 1562 from a realization that the Government needs help—lots of help—to adequately protect taxpayer funds from growing and increasingly sophisticated fraud. In the face of our current Federal debt crisis, it is more important than ever that we maintain an efficient, fair, and most of all, effective enforcement system to protect our Federal dollars from fraud and abuse.

This bill substantially rewrites a statute originally signed into law by President Abraham Lincoln and its provisions are intended to restore the overall intent of that Civil War-era tool against fraud. Primary in the original "Lincoln Law" as well as this legislation is the concept of private citizen assistance in guarding taxpayer dollars. The expanded qui tam provisions in this bill will serve to establish a solid partnership between public law enforcers and private taxpayers in the fight against fraud.

Many of my colleagues, including Senators DECONCINI, THURMOND, METZENBAUM, and HATCH, as well as their staffs, have devoted considerable time and effort to working toward a consensus on this bill. I want to thank them as well as my colleagues from the House of Representatives, Congressman GLICKMAN, Congressman BERMAN, Congressman KINDNESS, Congressman BROOKS, and their staffs, for working to advance this legislation so that it may be signed into law. I would also like to thank the attorneys in the Justice Department Civil Division for their assistance and expertise, the Center for Law in the Public Interest for its research and support, and Business Executives for National Security for its whole-hearted backing of this effort. I would also like to thank my own Judiciary subcommittee staff for devoting long hours toward making this legislation a reality.

Over the past few weeks, Senate and House negotiators have met and reconciled the differences between S. 1562 as passed by the Senate and S. 1562 as amended and passed by the House. A summary of the agreed upon changes from the Senate passed bill follows:

Forfeiture under the False Claims Act will be determined by the Court within the range of $5,000 to $10,000 and consequential damages will not be recoverable under the act. Criminal penalties under 18 U.S.C. 286 and 287 will conform with the uniform title 18 penalties.

Written interrogatories under the Civil Investigative Demand authority will be limited to questions relating to documents. And the statute of limitations will not extend past 10 years.

The role of the qui tam plaintiff is expanded to allow participation as a party to the action, but the court is granted greater discretion to impose limitations in certain circumstances on the participation of the qui tam plaintiff. The portion of awards allowed for such plaintiffs when the Government has entered the case is increased to 15-25 and 25-30 percent when the Government has not entered the action. When the qui tam plaintiff brings an action based on public information, meaning he is an "original source" within the definition under the act, but the action is based primarily on public information not originally provided by the qui tam plaintiff, he is limited to a recovery of not more than 10 percent. In other words a 10-percent cap is placed on those "original sources" who bring cases based on information already publicly disclosed where only an insignificant amount of that information stemmed from that original source.

Prevailing defendants may be awarded attorneys fees to be paid by the qui tam plaintiff when the action is found to be clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

Mr. President, I look foward to the adoption of this legislation and its favorable impact on the Federal budget.

Mr. THURMOND. I would like to inquire of the principal sponsor of S. 1562, the distinguished Senator from Iowa, Senator GRASSLEY, what role is contemplated for the qui tam relator when the Government chooses to proceed in a fraud action in an administrative setting? It is my understanding that S. 1562 has limited the role that the qui tam will play in an administrative proceeding? Is this the understanding of the principal sponsor?

Mr. GRASSLEY. The distinguished chairman of the Judiciary Committee is correct. In the event the Government chooses to proceed administratively, the qui tam relator retains the same rights available in the judicial action. Although the Senate compromised with the House concerning the qui tam relator's participation, both Houses of Congress clearly contemplated allowing for limitations on the qui tam's participation in judicial and administrative actions. The Senate and House agreed upon language which set out the limitations that a court could impose on a qui tam in civil actions when active participation by the qui tam could harm the proceeding.

Upon a showing by the Government that unrestricted participation during either an administrative or judicial

proceeding of a qui tam would interfere with or unduly delay the action, the court may, in its discretion, impose limitations on the qui tam's participation. Upon a showing by the defendant that the action would be for purposes of harassment or would cause undue burden or unnecessary expense, the court may similarly limit the qui tam's participation. Additionally, an administrative law judge has great discretion in an administrative proceeding to consider the cause of action in an expeditious fashion, and the legislation contemplates that administrative proceedings should be conducted with a minimum of undue delay or interference by qui tam relators.

Mr. THURMOND. I thank the distinguished Senator from Iowa.

Mr. HATCH. At this time I wish to commend the Senator from Iowa for his fine work in forwarding this important legislation and the Chairman of the Judiciary Committee, the Senator from South Carolina, for his role in working with Senator GRASSLEY and me in molding a fair and effective resolution of the issues involved with fraud against the Government. We are also grateful to the Members of the House of Representatives who participated in making this legislation possible. It is vitally important that we do something about the waste and lawlessness that fraud against our Government promotes. This bill substantially strengthens the tools to fight fraud but retains due process and fairness as to the accused.

I would like to point out that in providing fairness, the final bill gives the court flexibility in imposing damages and forfeiture. When there are mitigating circumstances present in the case, the court may impose a lesser forfeiture since a range of $5,000 to $10,000 per violation is provided in imposition of penalty or forfeiture upon a finding of fraud. Is this your understanding?

Mr. GRASSLEY. Yes, I agree with that statement. Therefore, if a small business has been found liable under the act, the court may consider the burden of the forfeiture to the business and impose a penalty on the lower end of the range. Similarly, a procedure is established for corporations to come forward when they discover fraud within their midst. When corporations follow these procedures in cooperating with the Government, the court may impose not only the lesser level of damages, but also a lesser level of penalty.

The motion was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

INSPECTION OF ASBESTOS

Mr. STEVENS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5073.

The assistant legislative clerk laid before the Senate the amendment of the House of Representatives to the bill (H.R. 5073) to amend the Toxic Substances Control Act to require the Environmental Protection Agency to promulgate regulations requiring inspection for asbestos-containing material in the Nation's schools, development of asbestos management plans for such schools, response actions with respect to friable asbestos-containing material in such schools, and for other purposes."

(The amendment of the House is printed in the RECORD of October 1, 1986, beginning at page H8816.

Mr. STAFFORD. Mr. President, the bill before the Senate at this time is one of the most important public health measures that we have considered. It is aimed at reducing the risk of asbestos-related disease for an estimated 15 million schoolchildren and 1.4 million school employees.

Asbestos is a deadly substance. An Assistant Administrator of the Environment Protection Agency testified before the Committee on Environment and Public Works that it is one of the four or five most hazardous substances being regulated by the Agency. The American Cancer Society, reflecting prevailing scientific opinion, testified that there is no known safe level of asbestos exposure and that efforts should be made to avoid even low-level exposure. Other expert witnesses testified that children are especially at risk because of their high breathing rates, their growing lungs and other factors.

This bill enjoys the support of a wide variety of educational, public health, and governmental organizations. These include the Service Employees International Union of the AFL-CIO, the National Parent Teachers Association, the National Education Association, the American Federation of Teachers, the National Governor's Association, the National Association of Counties, and a host of others.

Mr. President, some of these groups have been active for some time in the struggle to protect schoolchildren and employees from asbestos exposure. In 1984, the Service Employees International Union [SEIU] brought suit against EPA to compel the agency to issue comprehensive regulations dealing with the asbestos problems in the Nation's schools. Information reviewed and developed during the lawsuit, *SEIU* v. *EPA*, No. 84-2790 (D.D.C.), demonstrated the inadequacies of the EPA's asbestos program and the need for legislation requiring the agency to issue adequate and appropriate regulations regarding asbestos in schools. This legislation provides the same relief sought in the lawsuit.

In our deliberations on both the need for and the scope of this legislation we have been assisted by several groups which have provided valuable information on the dangers posed by asbestos in the Nation's schools, and the types of regulations which are required to address those dangers. Specifically, I would note the contributions of the Service Employees International Union, the National Educational Association, the National Parent-Teacher Association, the American Federation of Teachers, and the National School Boards Association. SEIU was particularly helpful in that information which it obtained in its lawsuit against EPA to compel the Agency to issue asbestos regulations demonstrated the inadequacies of the EPA Asbestos Program, and the need for legislation obligating EPA to take appropriate regulatory action.

Mr. President, with the active support of these groups, similar versions of the present bill passed through the entire legislative process in both Houses of Congress without receiving a single dissenting vote. That is a remarkable achievement and it bespeaks plainly the priority that Congress places on this important issue.

Mr. President, I want to note that we have reached agreement between the two Houses of Congress without the need for a formal conference committee. We achieved this by informally negotiating with the authors of the House bill a substitute bill incorporating features of S. 2083 and H.R. 5073. It is that substitute that was passed by the House and is now before the Senate as H.R. 5073. I point this out, Mr. President, to draw attention to the floor statements being made today by Senators who were actively involved in negotiating the present bill. Because there will be no conference report on this substitute bill, these floor statements will serve as legislative history for purposes of discerning the intent of the authors of the substitute bill, along with similar statements made by our counterparts in the other body. In that regard, Mr. President, I have agreed with the principal authors from the House of Representatives to print in the record of this debate a statement concerning certain aspects of this bill. That statement is as follows:

STATEMENT

The legislation requires the Administrator to promulgate regulations which define what "response actions" must be taken in school buildings, using the least burdensome methods which protect human health and the environment.

The statutory standard of "protection of human health and the environment" is the same standard that applies under the Resource Conservation and Recovery Act [RCRA] and is different from the "unrea-

sonable risk" standard applicable under section 6 of the Toxic Substance Control Act [TSCA]. The "protection of human health and the environment" standard requires the agency to determine what actions will protect human health and the environment from actual or potential asbestos hazards. Such hazards include actual or potential exposure to releases of asbestos that may cause adverse effects on human health or the environment.

The "protect human health and the environment" standard does not require EPA to establish a quantitative relationship between the physical characteristics of the asbestos-containing materials (e.g., their condition or location) and the health risks which may be posed by exposure to airborne asbestos fibers. The legislation does not intend that the agency be either required to or prohibited from using such technologies as air monitoring in meeting the standard. It does not require or prohibit the agency, from developing a model relating physical characteristics of the material to ambient fiber levels. The legislation also does not require or prohibit the agency from conducting a quantitative risk assessment relating ambient fiber levels to a particular amount of actual or potential health risks.

The requirement that EPA use the "least burdensome methods" in defining appropriate response actions does not in any way affect the overriding health standard that applies to the regulations—i.e., "protection of human health and the environment." Any method, or response action, selected by the agency must meet this overriding health standard. Once EPA determines the set of response actions that will meet the standard, the agency should make a separate determination of what constitutes the "least burdensome" approach.

The legislation recognizes that local circumstances—including how a specific population of a specific school uses the building at issue, and the long and short-term costs posed by the various options in the context of the local situation—could affect EPA's selection of the "least burdensome" methods. The legislation does not in any way affect the prerogative of local educational agencies to go further or do more work, than the least burdensome methods selected by the EPA regulations.

The legislation establishes four categories of circumstances in which EPA must prescribe, by regulation, appropriate response actions for friable asbestos-containing material. The four circumstances are: (1) situations where friable asbestos-containing material is damaged, deteriorated or delaminated; (2) situations where friable asbestos-containing is "significantly" damaged, deteriorated or delaminated; (3) situations where there is a potential (i.e., "reasonable likelihood") that the material will become damaged, deteriorated or delaminated in specified areas of the school; and (4) situations where there is a potential that the material will become "significantly" damaged, deteriorated or delaminated in such areas.

The Administrator must describe appropriate response actions in "at least" these four circumstances. This language means that, at a minimum, the EPA regulations must cover these circumstances by requiring implementation of response actions described for each of these circumstances. This language is derived from the Senate bill (S. 2083) which required prescription of response action, "at a minimum" in such circumstances. The "at least" language in the final legislation carries out the same statutory intent.

For the first circumstance, where the asbestos has already become damaged, deteriorated or delaminated, "response actions" include methods identified in Chapters 3 and 5 of the EPA Guidance Document. In the second circumstance, where the asbestos has already become significantly damaged, deteriorated or delaminated, the only options for "response actions" include methods identified in Chapter 5 of the EPA Guidance Document. Chapter 3 sets forth operations and maintenance methods, including minor repair. Chapter 5 includes enclosure, encapsulation, removal and relatively major repairs. Chapter 3 methods can never be used when asbestos has become "significantly" damaged, deteriorated or delaminated, although such methods remain an option when the asbestos is only damaged, deteriorated or delaminated.

The legislation contemplates that new technologies may be developed that will expand the universe of methods contained in both Chapters 3 and 5. If such technologies do become available, EPA should include them in its regulations, so long as the new technologies—or methods—protect human health and the environment. By referencing Chapters 3 and 5, the legislation establishes a floor of appropriate response actions but does not freeze the development of new, more protective and more cost-effective technologies to accomplish the overall goal of meeting the health standard in the legislation.

For the third and fourth circumstances, where asbestos has not yet become damaged, deteriorated or delaminated, but where there is a "reasonable likelihood" it will become damaged, deteriorated or delaminated, the legislation requires that EPA prescribe "preventive" measures that will either prevent the likelihood of damaged, deterioration and delamination or will otherwise protect human health and the environment.

For example, a school gymnasium used for basketball practice contains a ceiling composed of friable asbestos-containing material. The ceiling is not yet damaged, deteriorated or delaminated, but there is a "reasonable likelihood" it will become so as the school year progresses and basketballs are constantly thrown against it. The school could "prevent" damage by a variety of methods, including covering the ceiling with a net to prevent the balls from striking it or using another facility for basketball practice. The EPA regulations should develop such preventive methods fully and prescribe them for all potential damage situations.

Once again, preventive measures can include either methods to prevent damage or methods (such as closing the room) which will prevent adverse health effects as a result of exposure to airborne asbestos fibers. If damage, deterioration, or delamination is prevented, the minimal circumstances established by the legislation are never created. If damage, deterioration or delamination cannot be prevented, but other measures will protect human health and the environment, such methods would meet the statutory standard.

Section 204 contains a standard following the completion of response actions other than operation and maintenance activities which must be met before areas that have undergone response actions can be reoccupied. The section mandates that only electron microscopy can be used to analyze air samples to ensure that the standard has been met. The section establishes that phase contrast microscopy should not be used because it is an inadequate tool in that it cannot distinguish asbestos from other materials nor can it detect the most microscopic fibers.

The Congress recognizes that transmission electron microscopy is superior to scanning electron microscopy. However, at this point, transmission microscopy is expensive and not readily available. But these problems with transmission microscopy will likely be eased as the market responds to the needs of contractors who must use electron microscopy to meet the reoccupancy standard.

The new Title II of TSCA is subject to the provisions of Sections 15, 16, 19 and 20 of TSCA, except where Title II specifically provides otherwise. These exceptions include reduced civil penalty limits for certain infractions by local education agencies, requirements for channeling certain penalty payments back to local education agencies, specific factors to be used in determining the amount of a civil penalty against local education agencies, and deletion of the 60-day notice requirement with respect to citizens' civil actions against the Administrator for failure to meet a statutory deadline in section 203. Except as specifically provided in Title II, the usual TSCA provisions related to administrative civil penalties, maximum penalties and citizens' suits remain unchanged and may be used with regard to actions required by Title II.

Mr. STAFFORD. Mr. President, I would like to continue my comments with a brief discussion of certain aspects of this bill.

I would like to begin by reiterating a point made in the above statement. This bill requires EPA to define "response actions" to be taken by a local education agency when asbestos-containing material is found in a school. A number of response actions exist, ranging from an operation and maintenance plan to various forms of abatement, including removal of the asbestos from the school. In determining what response actions are acceptable in different circumstances, EPA must apply the standard expressed in section 202(10) and elsewhere in this bill. Each response action must protect human health and the environment.

This standard is taken from the Resource Conservation and Recovery Act. It was selected with the express purpose of avoiding any implication that the usual TSCA standard of unreasonable risk would apply to this new title of TSCA. This matter received considerable discussion. The Agency is not to consider cost in determining whether a response action is sufficient to protect public health and the environment.

In applying this standard, it is not intended that EPA have to prove that a particular response action (as opposed to a lesser response action) is necessary to protect human health and the environment before it can require that action in a regulation. Rather, the Agency should assure that all response actions are sufficient to meet this standard. Doubt should be

resolved in favor of affording greater protection.

This distinction between necessity and sufficiency is an important one. Based on present technical capability, the regulations under sections 203 (c) and (d) are likely to be structured in terms of a required response to a set of physical circumstances involving such things as the condition of the asbestos and its location. At the present time, EPA is unlikely to be able to prove a quantitative relationship between the physical circumstances of asbestos-containing material and a particular level of risk to human health or the environment in order to establish the necessity of a particular response action. To do so arguably would require the use of quantitative models, that do not exist, monitoring of ambient air concentration of asbestos fibers, and quantitative risk assessments. The Agency is not prohibited from using these tools, but it should be noted that the authors considered and rejected suggestions that quantitative risk assessments and air monitoring be a necessary precedent to a response action involving abatement methods. For reasons described in hearings before the Committee on Environment and Public Works, both are fraught with technical difficulty at the present time.

This bill also introduces the concept that the EPA regulations should identify the least burdensome method of response in a school, given the circumstances that exist there. This concept is not part of the RCRA standard. Its purpose is to provide further guidance to local education agencies by defining, from among the response actions that will protect human health and the environment, the one that is least burdensome. Circumstances peculiar to a particular school building may affect a local education agency's decision about what action to take. For example, local school officials might determine that removal of the asbestos, through a greater near-term expense, is preferable to an abatement method that involves long-term expenses associated with operation and maintenance and periodic reinspections. This bill is not intended to prevent or discourage a local education agency from taking action beyond that required by the EPA regulations.

Section 203(b) of the bill requires inspection for all asbestos-containing material, not just friable material. This requirement goes beyond EPA's 1982 inspection rule, which was limited to friable asbestos. A school building can be excluded from this inspection requirement only if all portions of it were inspected previously for both friable and nonfriable asbestos, consistent with the new requirements of this title. An inspection pursuant to EPA's guidance document that went no further than the minimum requirement to inspect for friable asbestos is inadequate under this bill.

Subparagraphs 203(c)(1) (C) and (D) refer to areas regularly used by building occupants, including maintenance personnel, in the course of their normal activities. In interpreting these subparagraphs, EPA should keep in mind the overall intent of this legislation to protect human health, including the health of individual maintenance personnel. The areas described should include areas that maintenance workers are required to enter in conjunction with their normal responsibilities and duties.

Paragraphs (3) and (5) of section 203(d) define circumstances for which an abatement action as described in chapter 5 of EPA's guidance document must be taken. These actions include removal, encapsulation, enclosure, and some types of repair of damaged asbestos.

The requirement that methods for responsing include these abatement methods recognizes that other more effective abatement methods may be developed in the future. It does not mean that lesser response actions that do not involve abatement as described in chapter 5, such as operation and maintenance activities, are acceptable in the circumstances referred to in these paragraphs. Operations and maintenance activities are described in chapter 3 of the guidance document and are only acceptable response actions in circumstances referred to in paragraphs (2) and (4) of section 203(d).

Sections 203(i) and 204(d)(1)(C) of the bill require implementation of asbestos management plans in a timely fashion. An asbestos management plan will contain a variety of activities ranging from one-time actions, such as removal of asbestos, to long-term operations and maintenance and periodic reinspection commitments. For this reason, it was not feasible to establish in the bill a date by which implementation of the plan must be complete. This does not mean that response actions needed to protect the health of schoolchildren and employees should drag on and on. A response action does no good until it is implemented. In fact, timely implementation is inherent in the notion of a response action that protects human health and the environment. Although some response actions can be scheduled so as to minimize disruption, there undoubtedly will be circumstances in which an action to protect the health of children or employees must be taken promptly. On these occasions, cost should not be an excuse for continuing to expose people to health-threatening asbestos. In fact, the authors deleted a reference in section 205(c)(2)(C) of H.R. 5073 to resources available to the local education agency to avoid the suggestion that cost considerations could constrain a Governor from rejecting a management plan that he or she finds does not contain a response action schedule that is reasonable and timely, taking into account a variety of health-related factors.

Mr. President, one issue that received a great deal of attention during development of this legislation related to whether and how the bill or any standards established under it could be used in court in cases to recover from product manufacturers the cost of removing or otherwise abating asbestos-containing products. The result of that discussion was a determination, expressed in section 209, that this bill does not in any way affect the authority or discretion of courts to make decisions under otherwise applicable law.

Mr. President, at the same time as we are considering legislation to accelerate the abatement of hazardous asbestos in schools, EPA is moving forward on other fronts. Under the Toxic Substances Control Act, the EPA has proposed phasing out asbestos with a total ban occurring after 10 years. I want to applaud EPA for taking the regulatory initiative to deal with this significant environmental health problem responsibly. OSHA has some responsibility in this area as well, and I would urge the two agencies to work together in implementing their standards to avoid duplication.

As the EPA staff analyzes the comments generated by the proposal, I would make an additional point. I understand that great progress is being made finding substitutes for asbestos in original equipment friction materials used in automotive and truck braking systems. New model automobile and truck braking systems are being redesigned to be able to utilize nonasbestos friction materials to provide equivalent safety in braking applications.

However, I have been told that research has not been as successful in finding asbestos substitutes for friction materials sold in the aftermarket which can provide equivalent safety in their braking effectiveness. The aftermarket in this industry is for automotive parts sold to replace original equipment. Apparently, older cars simply cannot always be retrofitted without the danger of sacrificing the safety of the braking system itself. Eventually, of course, this market will disappear but probably not within a decade. I hope that as EPA moves forward to solve the health problems associated with asbestos use, it will take note of the aftermarket.

Mr. President, through a clerical oversight, Senator CHAFEE's name was not added to the list of cosponsors of S. 2083, a measure that has since been indefinitely postponed. For historical accuracy, I ask unanimous consent

that Senator CHAFEE be added as a cosponsor of S. 2083.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

Mr. BAUCUS. Mr. President, I rise today to support final passage of H.R. 5073, the Asbestos Hazard Emergency Response Act of 1986. I commend Senator STAFFORD, and the other cosponsors for their hard work and dedication in developing this important legislation.

Asbestos is a known cause of cancer and serious lung disease. Unfortunately prior to 1970, asbestos was used extensively in thousands of school buildings across the United States.

It is well documented that when released into the air, asbestos fibers can cause lung cancer, asbestosis, pleural mesothelioma, and other debilitating lung diseases.

Up to now, the EPA has required schools to inspect for asbestos and publicize the results. However, EPA has not required schools to abate hazardous asbestos.

As a result, we still have a lot of schools with asbestos and we have the health of a lot of schoolchildren at risk.

This bill will turn EPA from a passive to an active player in the effort to abate the Nation's hazardous asbestos problem.

The bill requires EPA to set standards for the identification and abatement of hazardous asbestos. These new regulations will greatly improve the ability of schools to provide a safe environment for their students.

The bill also requires EPA to develop a model accreditation program for contractors and laboratories. This will ensure that all work involving asbestos is completed properly and in accordance with the highest standards.

Schools will be required to develop a management plan for abating hazardous asbestos and maintaining asbestos that has not become damaged.

In addition, this legislation will help ameliorate the problems contractors have faced in finding insurance, by establishing an abatement standard and accrediting contractors and laboratories.

Mr. President, it is important to note that agreement between the two Houses of Congress has been reached without the need for a formal conference committee. This was achieved by informally negotiating a substitute bill with the authors of the House bill. Since there will be no conference report on this substitute bill, this floor statement will serve as legislative history for purposes of discerning the intent of the authors of the substitute bill. The following paragraphs discuss in more detail particular sections of the legislation.

Section 203(d) requires the EPA to promulgate regulations describing a response action in a school building under the authority of a local education agency, using the least burdensome methods which protect human health and the environment. This requirement recognizes that, in a particular school building, there may be more than one response action that is adequate to protect human health and the environment. For example, in a particular situation a school might have a choice between enclosing damaged asbestos behind a protective barrier or removing it entirely. Enclosure probably would be less burdensome economically in the near term because it is a less expensive abatement option than removal. But enclosure almost always will cost more in the long run because the asbestos will have to be removed away at some future date. EPA regulations under the Clean Air Act require removal of asbestos before building renovation or demolition. Therefore, a local education agency will have to balance near-term lower cost against long-term higher cost in deciding which action is least burdensome. Mr. President, the EPA should not discourage a school from going ahead and eliminating their long-term asbestos problem if school officials should decide that is the best course of action.

EPA is expected to identify the method that generally will be least burdensome, but we recognize, Mr. President, that the decision about what actually is least burdensome in a particular school can only be made by local officials. The EPA regulations will not preclude a school from choosing an abatement alternative that is more expensive than the generally least burdensome one identified by EPA. Of course, the alternative chosen must be one that EPA has said is sufficient to protect human health and the environment.

Section 214 renders ineffective on the date of enactment any regulation under title I which is inconsistent with this title. However, it leaves in effect any regulation which is consistent with the regulations required under section 203. These consistent regulations can continue to be enforced, but they must be enforced using the provisions of title II. Of course, where an enforcement action already has been initiated, it can be continued under the law and regulations as they existed at the time. And EPA also can initiate an enforcement action related to rules in effect at the time a violation occurred.

In enforcing the previous rule requiring inspection of schools for asbestos, EPA developed a policy of reducing administrative civil penalties against a school in exchange for a commitment from the school to undertake actions beyond those actually required by the rule. Usually these are actions to abate an asbestos hazard. In these cases, only a token penalty payment is made to the Federal Government.

There is nothing in the present bill that would prohibit EPA from continuing that practice, though of course, the scope of activities beyond the requirements of the rules now will be less. Where the civil penalty is established by a court, however, the statute is explicit. It requires the court to order that any civil penalty collected be used by the local education agency for purposes of complying with this title. The funds represented by the penalty payment can, of course, be used in any school under the jurisdiction of the local education agency, and it can be used to accelerate abatement actions otherwise required by this law. Where the court establishes a penalty in excess of that needed for compliance, the excess amount shall be deposited into the asbestos trust fund established by section 5 of this bill.

Mr. President, this legislation has gained widespread support. Organizations like the American Cancer Society, the National Education Association, the National PTA, the National School Boards Association, the Service Employees International Union, and others support this bill. Additionally, both Houses of Congress passed similar versions of this bill unanimously.

In closing, I would like once again to commend the Chairman, Mr. STAFFORD for his tremendous effort, as well as the important contributions of Mr. BURDICK, Mr. HUMPHREY, Mr. LAUTENBERG, Mr. MITCHELL, and Mr. MOYNIHAN. Finally, I would like to acknowledge the efforts of Ron Outen of the Committee on Environment and Public Works, whose creativity and technical skills have been critical to the development of this important legislation.

I urge my colleagues to support this legislation.

Mr. CHAFEE. Mr. President, the problem of asbestos in our Nation's schools is a well-known issue. I am pleased to see that the Senate is about to pass legislation that originated in our Committee on Environment and Public Works. The bill before us is a compromise with our colleagues in the other body. It takes the best of their bill and of the Senate bill, which I cosponsored.

Although many school districts are attempting to cope with the problem of asbestos in their buildings, these efforts are being hampered by the lack of uniform, enforceable standards. Without regulatory guidance from EPA on whether certain actions are necessary, or adequate, or safe, some schools have undertaken expensive abatement projects that were either not needed or inadequate. Some hazards may have been made worse due to the lack of national standards.

Equally serious is the fact that some schools have taken no action at all.

A few States, like Rhode Island, have active, aggressive programs that will, nonetheless, benefit from new Federal standards. However, recognizing some States are on a faster track than the program called for in this bill, this bill will not interfere with the progress being made in those few States. Similarly, if a State takes adequate action before EPA regulations are established, we do not force that State to revise their entire program. The agency is required to issue criteria for making determinations regarding the adequacy of various portions of a State program. States such as Rhode Island, with a program that is widely regarded as a model of protection, will not have to reinvent the wheel.

I am pleased to see that the final version of this legislation includes an amendment that I successfully added in the committee to protect the integrity of such State programs. The amendment is designed to encourage these progressive States to go forward and to continue their work during the time it will take EPA to develop the necessary regulations and standards.

Mr. President, the chairman of our committee, Mr. STAFFORD, should be congratulated for his leadership on this issue. In recognition of his role as chief architect of this legislation I would like to discuss one important aspect of it with him.

Mr. CHAFEE. With respect to the inclusion of a statutory standard by which to test the adequacy of regulations, the original Senate bill was silent while the House bill included a standard derived from the Resource Conservation and Recovery Act, namely a requirement that regulations be adequate to "protect human health and the environment." I note that this bill includes such a standard. Is that correct?

Mr. STAFFORD. The Senator from Rhode Island is correct. We have included a slightly modified version of, for example, the House provision defining a "response action." The modification was agreed to so as to render significant portions of the legislative history from the consideration of H.R. 5073 in the House inapplicable to this bill. Several portions of the House report and some statements on the floor of the House incorrectly describe the standard as incorporated in this version of the bill.

Mr. CHAFEE. If I may suggest a specific example of the crucial point just made by the Senator from Vermont. On page 21 of House Report 99-763, it says, in relevant part:

> The . . . standard requires the agency to determine what actions *are necessary* to protect human health and the environment. . . . The agency must establish the levels of protection that *are necessary* to protect human health and the environment and the response actions that *are necessary* to achieve such levels. (emphasis added)

Use of the term "necessary" to qualify measures designed to meet the standard is a mistake. It may be viewed as a limitation on the authority of the agency to impose requirements. Although such a formulation is not a limitation in the context of RCRA, we have seen some regulated parties argue that the agency cannot impose a requirement unless the agency can prove such requirement is necessary. That is not the intent of RCRA nor of this bill.

To avoid confusion, what we have done here is, in effect, rewrite the House legislative history. Using the same example, that passage would now read:

> The . . . standard requires the agency to determine what actions shall be required to protect . . . The agency must establish the levels of protection that will protect human health and the environment and the response actions that will achieve such levels.

Mr. STAFFORD. The Senator has cited an excellent example of the problem as well as the solution that has been adopted by both Chambers. Similar modifications to other portions of the legislative history shall be deemed an integral part of our agreement to include the statutory standard.

Mr. CHAFEE. It is also important to note that, although the House has characterized the statutory standard as that found in RCRA, the inclusion of a requirement that the agency select "the least burdensome methods" is a significant departure from the rule of RCRA and, as set forth in the conference report on the 1984 amendments to RCRA (H. Rept. 98-1133 at 102-103), such a requirement is not a part of the RCRA standard.

Mr. STAFFORD. Again, the Senator has correctly stated the understanding between the two Chambers. Such an understanding was one of the key preconditions to inclusion of the requirement referred to by the Senator.

Mr. MOYNIHAN. Mr. President, I rise to speak on behalf of an important and necessary bill, S. 2083, the Asbestos Hazard Emergency Response Act of 1986. It will help us to protect the most vital members of the American public, our children, from the dangers of asbestos.

As my colleagues will remember, this issue is one that has concerned me for some time. I was the chief Democratic sponsor of the Asbestos School Hazard Abatement Act of 1984, under the authority of which the Federal Government has distributed some $50 million in grants and loans to our Nation's school systems to help them look for asbestos. Another $50 million is included in the most recent continuing resolution for this purpose.

Now, if there is any more pervasive hazardous substance than asbestos, I do not know of it. The term "asbestos" refers to several different fibrous minerals that have seen wide use in this country as cheap and effective reinforcing and insulating materials. During the 20th century some 30 million metric tons of asbestos have been used for floor tiles and asbestos-cement pipes, or sprayed or troweled on walls and ceilings. We used 800,000 metric tons of asbestos in this country in 1973, the peak year. We still use asbestos in certain applications. Asbestos is found in public water supplies and private automobiles. Most public buildings—including schools—have some. It is present in thousands of buildings in my home State of New York, and in the office buildings of the U.S. Senate.

That asbestos can be hazardous is beyond doubt. Asbestos fibers are released into the air as the materials that contain them decay over time or are damaged. The fibers are quite small and easily inhaled; they have no immediate effect. The natural motions of breathing bury the sharp fibers deep in the lungs; the body cannot remove them, and there they remain.

Numerous animal studies have shown that asbestos can cause cancer in humans, but there also is the long and tragic experience with occupational exposure to asbestos to clinch the argument. Thousands of former shipyard workers have asbestosis, a debilitating lung disease; many others have cancers of the lung, stomach, and colon. And some are afflicted with mesothelioma, a rare and fatal form of abdominal cancer, for which there is no known cause other than exposure to asbestos.

The long latency period of cancer and the fact that asbestos can remain in the lung for years means that children exposed to asbestos at school are at particularly high risk. It also places a particular obligation on us to be sure that children, above all others, are properly protected from the hazards of airborne asbestos.

The EPA has long acknowledged that regulations to limit the widespread use of asbestos are needed. As long ago as October 17, 1979, the agency issued an advance notice of proposed rulemaking [ANPR] addressing commercial and industrial use of asbestos—44 Federal Register 60061—and announced publicly that it was considering banning certain uses of asbestos. But nothing beyond identification and notification of possible asbestos hazards has been required of school officials by EPA. And there has not been enough information available to the schools to tell them how to do even that.

Asbestos "abatement" does not mean removing all the asbestos, willy-nilly. Either removal or encapsulation may be best for asbestos that is ex-

posed or disintegrating. But for materials that are not releasing asbestos fibers into the air, it is sometimes better to leave them in place rather than disturb them and risk asbestos release. All manner of problems have arisen, however, because responsible officials have often not known what to do.

It is not surprising that as concern over asbestos has grown, ad hoc local efforts have been mounted to remove potentially deadly asbestos materials. People with only the best of intentions have responded to great pressure and public outcry, but oftimes without the necessary expertise to carry out safe, effective remedial programs. There have been proper and effective efforts, but there have also been all too many horror stories of untrained shop teachers or school custodians tearing out asbestos insulation over a weekend with students as their helpers. It simply is not acceptable for Congress to allow fear and inexperience to add to the danger that already exists.

This bill requires the EPA to provide the solid technical information that the schools need. And it requires that school systems develop and adopt plans that spell out how they will determine where the threat is and where it is not, and what must be done about it.

Although local school systems have long been responsible for the health and safety of their students, this bill recognizes the need for Federal assistance and authorizes an additional $100 million—above and beyond the ASHA moneys already available—to help financially strapped schools develop effective programs to fulfill this responsibility. It is essential that we make all of our Federal expertise available to help ensure that our schoolchildren are protected from the dangers of asbestos.

EPA's failure to produce proper standards and regulations to date for asbestos in schools is beyond excuse; the schools have not had the tools they need to address asbestos hazards.

If this legislation is enacted they shall have them. And then, at long last, those who care for our children will be able to tell us that they have looked—carefully—and that they have fixed any problems properly.

Mr. President, I commend Senator STAFFORD for his leadership on this issue, and all of the Members of both Houses with whom I have worked on this issue for some years. I urge the adoption of this measure.

Mr. HUMPHREY. Mr. President, as a cosponsor of the Asbestos Emergency Response Act, I believe that H.R. 5073 is an effective means by which to ensure the protection of those children and adults who learn and work in our Nation's schools from exposure to hazardous asbestos particles. Currently, the Environmental Protection Agency has no standards for asbestos identification, management, and abatement. Under H.R. 5073, EPA must establish regulations requiring local education agencies to perform proper inspections of schools for asbestos-containing materials and to develop safe and appropriate asbestos management plans. All regulations promulgated by EPA under this act must protect human health and the environment.

One important aspect of H.R. 5073 requires that regulations for the development of an asbestos management plan include all asbestos-containing materials. Nonfriable asbestos will be identified under a management plan which will include surveillance and periodic reinspection of all asbestos-containing materials. In addition, asbestos regulations will require, at a minimum, response actions for all friable asbestos-containing material which is damaged, deteriorated, or delaminated and for all friable asbestos-containing materials which are in an area regularly used by building occupants where there is a reasonable likelihood that the material will become damaged, deteriorated, or delaminated. Response actions will include the repair, enclosure, encapsulation, and removal of hazardous asbestos-containing material.

Under H.R. 5073, EPA shall promulgate regulations describing response actions using "the least burdensome methods which adequately protect against the adverse effects of asbestos." It is important to note that the term "least burdensome" does not imply a cost-benefit analysis. When building use plans, long- and short-term costs and other unique factors are taken into account, the least burdensome response action may not always be the most inexpensive option. All response actions must be protective of human health and the environment. EPA will determine the least burdensome response action which best meets the local needs specific to a school building.

Children are at increased risk of developing diseases which result from the inhalation of asbestos fibers. Therefore, safe schools are at the heart of any program to protect the health and welfare of our children. It is imperative that proper asbestos management plans be developed and implemented at all of our Nation's schools. Mr. President, I am pleased to have participated in the negotiations and hard work which have resulted in the Asbestos Hazard Emergency Response Act of 1986. I believe that this act will ensure that our children are adequately protected from exposure to hazardous asbestos.

Mr. BURDICK. Mr. President, I rise today to support final passage of H.R. 5073, the Asbestos Hazard Emergency Response Act of 1986. I commend Senator STAFFORD for his tremendous effort in this matter. He and his staff have done a fine job in developing this important legislation. I am a cosponsor of the bill, and have worked closely with the chairman to insure the development of sound policy.

Asbestos is a known human carcinogen. When certain types of airborne asbestos fibers are inhaled, various kinds of cancer can develop. This form of asbestos, known as friable, poses a serious health threat to some 15 million of our Nation's schoolchildren and 1.4 million school employees, for it exists in approximately 31,000 school buildings across the country.

Existing law to control the threat of hazardous asbestos in schools has proven to be insufficient. This legislation will assure the safe and timely abatement of all friable asbestos and the careful and periodic surveillance of all nonfriable asbestos remaining in our Nation's school buildings.

The bill requires the Environmental Protection Agency [EPA] to set standards for the identification and abatement of hazardous asbestos in schools and requires abatement in accordance with those standards. At a minimum, these standards, to protect human health and the environment, will define when abatement measures, such as encapsulation, enclosure or removal, are necessary or perhaps the simple implementation of an operations and maintenance plan.

The bill also requires EPA to develop a model contractor accreditation program and requires States to develop a similar program. This will assure the availability of competent contractors. In addition, the legislation requires local school districts that have not done so to inspect their facilities and to develop appropriate management plans when either friable or nonfriable asbestos is found. For schools that have already inspected for asbestos, they will be excused from conducting a reinspection only as long as their previous inspection was consistent with the procedures and requirements under this bill. If not, they too will be required to inspect for asbestos-containing material. The State will be responsible for the plans and the enforcement of the program.

H.R. 5073 deserves the support of the entire Senate. Its aim is to protect our Nation's schoolchildren and school employees from the serious threat posed by the presence of hazardous asbestos. I am proud to support this legislation and encourage my colleagues to do the same.

Mr. ABDNOR. Mr. President, I am pleased we have the opportunity today to consider the Asbestos Hazard Emergency Response Act of 1986.

On September 10, the Senate approved S. 2083—this body's companion to the version of H.R. 5073 approved

August 12 by the House. The text of the bill before us today is the result of negotiations between the sponsors of S. 2083 and the initial version of H.R. 5073—outside a formal conference between the two Houses. A great deal of time and effort—by Members and staff from both the House and Senate, together with vital input from an array of interest groups, including the National PTA, NEA [National Education Association], AASA [American Association of School Administrators], NSBA [National School Boards Association], AFT [American Federation of Teachers], and SEIU [Service Employees International Union]—has been devoted to this legislation. All those involved have worked in earnest to develop a sound approach to assisting schools in mitigating potential asbestos hazards.

The mere mention of asbestos provokes panic amongst parents. Asbestos, after all, is a known cause of serious lung disease: including asbestosis and mesothelioma. Children are believed to be at greater risk of contracting asbestos-related diseases due to the earlier period of life at which they are exposed, high respiration rates and other factors. This legislation is needed to adequately protect our Nation's 15 million schoolchildren and 1.4 million school employees from asbestos hazards.

The distinguished chairman of the Committee on Environment and Public Works, Senator STAFFORD, the author of S. 2083, has done an outstanding job of moving this important legislation through the Senate. He has made every effort to address my concerns—I take this opportunity to express my thanks to my friend from Vermont and his able staff. Ron Outen, who has done a yeoman's job with the legislation under circumstances which would try the most patient among us, is deserving of special thanks.

As Senator STAFFORD pointed out, the statements made by Senators who were instrumental in negotiating the bill before us must serve in place of a conference report on this final text. Since I wholeheartedly concur with the way in which the senior Senator from Vermont has characterized the intent of the authors of the substitute bill, I will concentrate on another key element of the asbestos-in-schools problem.

Throughout the process of developing this bill, I have continued to emphasize the need for continued financial support for asbestos abatement projects in our Nation's public and private schools. As the author of the Asbestos School Hazard Abatement Act of 1984 [ASHAA], which provides grants and no-interest loans to financially needy school districts for necessary asbestos abatement activities, I am hopeful the House will be persuaded to agree to the $50 million fiscal year 1987 appropriation included in the continuing resolution before the Senate. This is certainly not the time to zero out asbestos abatement funds and dismantle the technical support system EPA has established largely through ASHAA.

This new initiative calls for the identification of asbestos problems which heretofore have not been identified or adequately addressed. The bill includes a 10 percent set-aside of the funds appropriated for ASHAA in fiscal year 1988 and fiscal year 1989 to assist LEAs [local educational agencies]—both public and private—in complying with the bill's requirements for inspection and identification of asbestos-containing materials in their buildings and development of O&M [operations and maintenance] plans.

Since these requirements will most certainly lead to an increased demand for asbestos abatement funds, we must make certain our schools have the assistance they need to cope with asbestos hazards safely and effectively—we must continue to provide Federal financial support through ASHAA.

Mr. President, I am pleased to have played a part in bringing this vital legislation before the full Senate. I am hopeful the Asbestos Hazard Emergency Response Act will be received as enthusiastically by the administration as it has by both Houses of Congress.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

Mr. MITCHELL. Mr. President, I am very pleased that we are able to take final action today on legislation to encourage the identification and abatement of asbestos containing materials in our Nation's schools.

I would like to congratulate Senator STAFFORD for his leadership in developing this badly needed legislation. Without his determined efforts, it is unlikely that this final bill would be before us today.

It is difficult to overestimate the seriousness of the health threat exposure to asbestos poses to school children around the country. The EPA estimates that 31,000 schools contain friable asbestos. Some 15 million students and 1.4 million school employees occupy these buildings.

Exposure to even small amounts of asbestos can result in serious, life threatening diseases, including lung cancer, asbestosis, and mesothelioma. Other forms of cancer are also correlated with asbestos exposures.

While anyone exposed to asbestos runs a substantial health risk, children are at an even greater risk. Children are generally more sensitive to asbestos exposures because of higher respiration rates and a longer remaining lifetime in which disease may develop.

I am confident that the bill before us today will improve substantially the level and quality of asbestos abatement actions in schools around the country.

One of the key provisions of the bill directs the EPA to promulgate regulations describing the circumstances in which action is needed to abate asbestos. Several circumstances are identified and defined in the bill in section 203(c). Appropriate response actions for each circumstance are identified in section 203(d).

It is important to note that the definitions stated for each circumstance identified in section 203(c) of the bill are minimum conditions. EPA is to use the stated definitions as a starting point in developing regulations provided for under this legislation and definitions in the regulations are to be "at least" as stringent as definitions included in the legislation.

EPA is free to define each identified circumstance as broadly and stringently as it finds appropriate, but may not use a definition any narrower than the definition in the bill. EPA has the discretion, for example, to make any of the definitions more stringent by expanding it to include any asbestos-containing material, rather than simply "friable" asbestos-containing material.

The policy that the EPA is to develop regulations as appropriate and that the stated definitions in the bill are minimum definitions of each circumstance has been included in the bill since it was first introduced. I hope that the EPA will make active use of this authority to assure the highest degree of human health protection appropriate in each circumstance.

A second important aspect of the bill provides for the inspection of school buildings for asbestos containing materials. The bill requires both the inspection of school buildings and the reinspection of buildings which were not adequately inspected in the past.

The bill provides that a building or portion of the buildings does not need to be reinspected if the original inspection was conducted according to procedures and requirements which are at least as stringent as those included in the regulations under this legislation.

This provision is intended to assure that all portions of every school building are adequately inspected by trained personnel. Effective inspection is an essential first step in assuring the safety of school buildings and I hope that the EPA will use the authority of this provision to assure that every school building has an effective and thorough inspection.

I believe this legislation provides a sound legislative framework for the abatement of asbestos in our schools. I am confident that private contractors, schools, States and the EPA will each do their part to make the process work.

Mr. STEVENS. Mr. President, I move the Senate concur in the House amendment.

The motion was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

DISTRICT OF COLUMBIA JUDICIAL EFFICIENCY AND IMPROVEMENT ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 968, which is H.R. 3578, dealing with local courts in the District of Columbia.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3578) to provide permanent authority for Hearing Commissioners in the District of Columbia courts, and so forth, and for other purposes, reported with an amendment.

The Senate proceeded to consider the bill (H.R. 3578) to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes, which had been reported from the Committee on Governmental Affairs, with an amendment to strike out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Judicial Efficiency and Improvement Act of 1986".

SEC. 2. HEARING COMMISSIONERS.

(a) Section 1732 of title 11 of the District of Columbia Code is amended to read as follows:

"§ 11-1732. Hearing commissioners.

"(a) With the approval of a majority of the judges of the Superior Court of the District of Columbia in active service and subject to standards and procedures established by the rules of the Superior Court, the chief judge of the Superior Court may appoint Hearing Commissioners, who shall serve in the Superior Court and perform the duties enumerated in subsection (j) of this section and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

"(b) Hearing commissioners shall be selected pursuant to standards and procedures adopted by the Board of Judges. Such procedures shall contain provisions for public notice of all vacancies in hearing commissioner positions and for the establishment by the Court of an advisory merit selection panel, composed of lawyer and nonlawyer residents of the District of Columbia who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions.

"(c) No individual shall be appointed as a hearing commissioner unless that individual—

"(1) is a citizen of the United States;

"(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the appointment or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government; and

"(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment, and retains such residency during service as a hearing commissioner, except that Hearing Commissioners appointed prior to the effective date of this section shall not be required to be residents of the District to be eligible to be appointed to one of the initial terms under this section or to be reappointed.

"(d) Hearing commissioners shall be appointed for terms of four years and may be reappointed for terms of four years. Those individuals serving as hearing commissioners on the effective date of this Act shall be automatically appointed for a four year term.

"(e) Upon the expiration of a hearing commissioner's term, the hearing commissioner may continue to perform the duties of office until a successor is appointed, or for 90 days after the date of the expiration of the hearing commissioner's term, whichever is earlier.

"(f) No individual may serve as a hearing commissioner under this section after having attained the age of seventy-four.

"(g) The Board of Judges may suspend, involuntarily retire, or remove a hearing commissioner, during the term for which the hearing commissioner is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability. Suspension, involuntary retirement, or removal requires the concurrence of a majority of the judges in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and the opportunity to be heard shall be furnished to the hearing commissioner pursuant to procedures established by rules of the Superior Court.

"(h) If the Board of Judges determines that a hearing commissioner position is not needed, the Board of Judges may terminate the position.

"(i)(1) Hearing commissioners may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court.

"(2) Hearing commissioners shall abide by the Canons of Judicial Ethics.

"(j) A hearing commissioner, when specifically designated by the chief judge of the Superior Court, and subject to the rules of the Superior Court and the right of review under subsection (k), may perform the following functions:

"(1) Administer oaths and affirmations and take acknowledgements;

"(2) Determine conditions of release pursuant to the provisions of title 23 of the District of Columbia Code (relating to criminal procedure);

"(3) Conduct preliminary examinations and initial probation revocation hearings in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it;

"(4)(A) In any case brought under sections 11-1101(1), (3), (10), or (11) of the District of Columbia Code involving the establishment or enforcement of Child Support, or in any case seeking to modify an existing child support order, where a hearing commissioner in the Family Division of the Superior Court finds that there is an existing duty of support, the hearing commissioner shall conduct a hearing on support, make findings, and enter judgment as provided by law, and in accordance with guidelines established by rule of the Superior Court, which judgment shall constitute a final order of the Superior Court.

"(B) If in a case under subparagraph (A), the hearing commissioner finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the hearing commissioner shall establish a temporary support obligation and refer unresolved issues to a judge of the Superior Court.

"(C) In cases under subparagraphs (A) and (B) in which the hearing commissioner finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceeding under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the hearing commissioner shall enter a default order, which shall constitute a final order of the Superior Court;

"(5) Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Divisions of the Superior Court, excluding jury trials and trials of felony cases.

(k) With respect to proceedings and hearings under paragraphs (2), (3), (4), and (5) of subsection (j), a review of the hearing commissioner's order or judgment, in whole or in part, may be made by a judge of the appropriate division sua sponte and must be made upon a motion of one of the parties made pursuant to procedures established by rules of the Superior Court. The reviewing judge shall conduct such proceedings as required by the rules of the Superior Court. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the order or judgment.

"(1) The Superior Court shall ensure that all hearing commissioners receive training to enable them to fulfill their responsibilities.

"(m)(1) The chief judge of the Superior Court, in consultation with the District of Columbia Bar and other interested parties, shall within one year of the effective date of this section, make a careful study of conditions in the Superior Court to determine—

"(A) the number of appointments required to provide for the effective administration of justice;

"(B) the divisions in which hearing commissioners shall serve;

"(C) the appropriate functions of hearing commissioners; and

"(D) the compensation of, and other personnel matters pertaining to, hearing commissioners.

Upon completion of the study, the chief judge shall report the findings of such study to the appropriate committees of the Congress.

"(2) After the study required by paragraph (1), the chief judge shall, from time to time, make such studies as the Board of Judges shall deem expedient, giving consideration to suggestions of the District of Columbia Bar and other interested parties.

"(n) With the concurrence of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court may, promulgate rules, not inconsistent with the terms of this section, which are necessary for the fair and effective utilization of hearing commissioners in the Superior Court.

"(o) For purposes of this section, the term "Board of Judges" means the judges of the Superior Court of the District of Columbia. Any action by the Board of Judges shall require a majority vote of the sitting judges.".

SEC. 3. APPOINTMENT OF EXECUTIVE OFFICER OF THE DISTRICT OF COLUMBIA COURTS.

Section 1703 of title 11 of the District of Columbia Code is amended—

(1) by striking out subsection (b);

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (a) the following new subsections:

"(b) The Executive Officer shall be appointed, and subject to removal, by the Joint Committee on Judicial Administration with the approval of the chief judges of the District of Columbia Courts. In making such appointment the Joint Committee shall consider experience and special training in administrative and executive positions and familiarity with court procedures.

"(c) The Executive Officer shall be a bona fide resident of the District of Columbia or become a resident not more than 90 days after the date of appointment except that the Executive Officer in office at the effective date of this Act shall not be required to be or to become a resident of the District of Columbia.".

SEC. 4. MANDATORY RETIREMENT AGE OF JUDGES.

Section 431(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "seventy" and inserting in lieu thereof "seventy-four".

SEC. 5. REORGANIZATION OF AUDIT RESPONSIBILITY.

(a) AUDITOR-MASTER.—Section 11-1724 of title 11 of the District of Columbia Code is amended—

(1) by striking out "(1) audit and state fiduciary accounts,"; and

(2) by respectively designating clauses (2) and (3) as clauses "(1)" and "(2)".

(b) REGISTER OF WILLS.—Section 11-2104(a) of title 11 of the District of Columbia Code is amended—

(1) in paragraph (2) by striking out "and" after the semicolon;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting at the end thereof the following new paragraph:

"(4) audit and state fiduciary accounts.".

SEC. 6. ELIMINATION OF DUPLICATE JUDICIAL FINANCIAL REPORTING REQUIREMENT.

(a) TERMINATION OF FEDERAL DISCLOSURE REQUIREMENTS.—Section 303 of the Ethics in Government Act of 1978 (28 U.S.C. App. 301) is amended by inserting at the end thereof the following new subsection:

"(h) The provisions of this Act shall not apply to any judicial officer or employee of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals or any other employee of the District of Columbia court system.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 308(9) of such Act (28 U.S.C. App. 308(9)) is amended by striking out "courts of the District of Columbia".

SEC. 7. CERTIFICATION OF QUESTIONS OF LAW.

Subchapter II of Chapter 7, title 11, District of Columbia Code, is amended by inserting after section 11-722 the following new section:

"§ 11-723. Certification of Questions of Law

"(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such certifying court and as to which it appears to the certifyng court there is no controling precedent in the decisions of the District Columbia Court of Appeals.

"(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon the court's motion or upon motion of any party to the cause.

"(c) A certification order shall set forth (1) the question of law to be answered; and (2) a statement of all facts relevant to the questions certified and the nature of the controversy in which the questions arose.

"(d) A certification order shall be prepared by the certifying court and forwarded to the District of Columbia Court of Appels. The District of Columbia Court of Appeals may require the original or copies of all or such portion of the record before the certifying court as are considered necessary to a determination of the questions certified to it.

"(e) Fees and costs costs shall be the same as in appeals docketed before the District of Columbia Court of Appeals and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

"(f) The District of Columbia Court of Appeals may prescribe the rules of procedure concerning the answering and certification of questions of law under this section.

"(g) The written opinion of the District of Columbia Court of Appeals stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

"(h)(1) The District of Columbia Court of Appeals, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any State under the conditions described in subsection (a).

"(2) The procedures for certification from the District of Columbia to a State shall be those provided in the laws of that State.".

SEC. 8. PUBLIC ACCESS TO MATERIALS OF JUDICIAL NOMINATION COMMISSION.

Section 434(c)(3) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out the last sentence and inserting in lieu thereof: "Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code, (known as the Freedom of Information Act) shall not apply to any such materials.".

SEC. 9. MEETINGS OF THE JUDICIAL NOMINATION COMMISSION.

Section 434(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof "Meetings of the Commission may be closed to the public. Section 742 of this Act shall not apply to meetings of the Commission.".

SEC. 10. PUBLIC ANNOUNCEMENT OF JUDICIAL RECOMMENDATIONS.

Section 434(d) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof the following new paragraph:

"(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission.".

SEC. 11. DISCLOSURE OF CERTAIN INFORMATION TO THE JUDICIAL NOMINATION COMMISSION.

Section 11-1528 of title 11, District of Columbia Code, is amended by striking out all of subsection (a) and inserting in lieu thereof the following:

"(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

"(2)(A) The judge whose conduct or health is the subject of any proceedngs under this subchapter may disclose or authorize the disclosure of any information under paragraph (1).

"(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

"(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge of a District of Columbia court.".

SEC. 12. REAPPOINTMENT TO JUDICIAL OFFICE.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended—

(1) in the first sentence by striking out "three months" and inserting in lieu thereof "six months"; and

(2) in the second sentence, by striking out "thirty" and inserting in lieu thereof "sixty".

SEC. 13. MODIFICATION OF JUDICIAL REAPPOINTMENT EVALUATION CATEGORIES.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended in the third sentence by striking out "exceptionally well-qualified or".

SEC. 14. SERVICES OF RETIRED JUDGES.

Section 11-1504(a) of title 11, District of Columbia Code, is amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the "Commission") to be ap-

pointed as a senior judge in accordance with this section.".

SEC. 15. EXTENSION OF PERIOD FOR SUBMITTING JUDICIAL NOMINATIONS.

Section 434(d)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "thirty days" each place it appears and inserting in lieu thereof "sixty days".

SEC. 16. JUDICIAL COMPENSATION.

(a) COURT OF APPEALS.—Section 703(b) of title 11 of the District of Columbia Code is amended by striking out "90 per centum of".

(b) SUPERIOR COURT.—Section 904(b) of title 11 of the District of Columbia Code is amended by striking out "90 per centum of".

SEC. 17. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

AMENDMENT NO. 3215

(Purpose: To make certain technical and clarifying amendments in the committee substitute)

Mr. STEVENS. Mr. President, I send to the desk an amendment to the committee substitute on behalf of Senator MATHIAS.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. MATHIAS, proposes an amendment numbered 3215.

Mr. STEVENS. Mr. President, I ask unanimous consent the amendment not be read.

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

The amendment is as follows:

Section 1732(m)(1) of title 11 of the District of Columbia Code (as amended by section 2(a) of the committee substitute) is amended in the matter before clause (A) by inserting after "District of Columbia Bar" the following: ", the City Council of the District of Columbia,".

Section 1703(c) of title 11 of the District of Columbia Code (as added by section 3(3) of the committee substitute) is amended by striking "90 days" and inserting "180 days".

Section 14 of the committee substitute is amended to read as follows:

SEC. 14. SERVICES OF RETIRED JUDGES.

(a) SENIOR JUDGES.—The second sentence of section 1504(a)(1) of title 11, District of Columbia Code, is amended by striking "every two years" and inserting "every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years,".

(b) REQUEST FOR SENIOR JUDGESHIP.—Section 1504(a) of title 11, District of Columbia Code, is further amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judical Disabilities and Tenure (hereinafter in this section referred to as the 'Commission') to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission."

(c) SERVICE BY RETIRED JUDGES.—Section 1565 of title 11, District of Columbia Code, is amended to read as follows:

"11-1565. Service by Retired Judges.

"Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity.".

The committee substitute is amended by redesignating section 17 as section 18 and by adding after section 16 the following new section:

SEC. 17. CHIEF JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AS PRESIDING OFFICER OF THE PUBLIC DEFENDER SERVICE.

Section 330 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358; 1-2703, D.C. Code) is amended—

(1) by striking out clause (A) of subsection (b)(1) and redesignating clauses (B), (C), (D), and (E) as clauses (A), (B), (C), and (D), respectively; and

(2) in paragraph (2) of subsection (b) by striking out "Chief Judge of the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Chief Judge of the District of Columbia Court of Appeals".

The PRESIDING OFFICER. Is there further discussion? If not, the question is on agreeing to the amendment.

The amendment (No. 3215) was agreed to.

Mr. MATHIAS. Mr. President, I am pleased to bring before the Senate two bills which will greatly enhance the ability of the local courts in the District of Columbia to provide justice in the face of an ever burgeoning caseload. These bills are the culmination of a great deal of work by many members of the local bar, the courts, and the Congress.

The first bill, H.R. 2946, the District of Columbia Jury System Act, will allow the Superior Court of the District of Columbia to establish an independent jury system for that local trial court. Under current law, the Federal district court for the District of Columbia is charged with running a single jury selection system for both the local and the Federal courts. This bill would cut the tie that binds the local court to the Federal court, and would allow the superior court to implement a one day/one trial system which it successfully tested recently. The bill has the strong support of the local courts, the local bar, and the administration.

The second piece of legislation before the Senate is the District of Columbia Judicial Efficiency Act of 1986, H.R. 3578. This bill is a package of proposals to reform the operations of both the superior court and the District of Columbia Court of Appeals. It will permanently authorize the use of hearing commissioners in the superior court, and establishes the procedures under which commissioners are to be selected and disciplined. It requires the court to study the hearing commissioner system over the next year, and will bring the District of Columbia into compliance with the Child Support Enforcement Amendments of 1984—Public Law 98-378—which requires the establishment of an expedited process for dealing with child support orders. It addresses some housekeeping issues identified by the D.C. Bar Court Study Committee in 1983, including reorganization of the court's audit responsibilities, authorizing the court of appeals to entertain certified questions of law from State courts of apeals, and amending certain procedures of the Judicial Nomination Commission and the Judicial Disabilities and Tenure Commission. In addition, H.R. 3578 removes the limitation in current law on judicial salaries in the District of Columbia courts.

Mr. President, the amendment which I propose to H.R. 3578 is the result of consultation with the House District Committee from where the bill originated. When it is adopted by the Senate, the bill will be in a form that is supported by the House, and I have the assurance of members of the House District Committee that they will move the amended bill in an expeditious manner.

My amendment does several things. First, it will require that the chief judge of the District of Columbia Superior Court consult with the Council of the District of Columbia in its study of the court's hearing commissioner system which is mandated in section 2 of the bill. Second, it would amend section 3 by increasing the time during which a future executive officer of the courts will have to become a resident of the District following appointment from 90 days to a more reasonable 180 days.

Third, my amendment reworks the provisions of the bill which govern the service of retired judges as senior judges of both the superior court and court of appeals. The amendment is the result of the negotiations between the judges of the courts and the Judicial Disabilities and Tenure Commission which current law requires to review the suitability of a retired judge to serve as a senior judge. The

amendment would require senior judges to be reviewed every 4 years, except that a judge who has reached his 74th birthday is to be reviewed every 2 years. In addition, it requires a retiring judge to notify the Judicial Disabilities and Tenure Commission of his or her desire to be certified for senior judge status within 1 year after retirement. Currently retired judges are grandfathered for 180 days from the date of enactment of this section. Finally, the amendment guarantees that senior judges are compensated at the same daily rate as active judges, with an overall cap of the salary of an active judge by allowing what is in effect a bookkeeping change. This provision will ensure that each senior judge is paid at the same rate for the same amount of work, but maintains the cap which is contained in the current law.

The final change made by my amendment would remove the chief judge of the Court of Appeals for the District of Columbia Circuit from the panel which selects the Board of Trustees of the Public Defenders Service. In addition, the amendment would designate the chief judge of the District of Columbia Court of Appeals as the presiding officer of that panel. This provision is being included at the insistence of the House District Committee. The involvement of a Federal court in the selection process for the PDS Board of Trustees is very appropriate, and the chief judge of the District of Columbia District Court will remain on that panel. I would be most reluctant to accede to this provision if the Federal district court representation were not to continue. As the Director of the PDS stated in a letter to the Subcommittee on Governmental Efficiency and the District of Columbia, "Federal judges are exposed to a broader range of members of the bar beyond merely those attorneys who practice in the local court system * * *" and provide "valuable insights into the mission of the agency. * * *" And finally, it is imperative that the action taken by the Congress not be interpreted as an attempt to in any way diminish the independence of the PDS.

Mr. President, H.R. 3578 and H.R. 2946 are important and vital pieces of legislation which will greatly enhance the operations of the superior court and the court of appeals in the District of Columbia. I urge my colleagues to join me in supporting both of these bills.

The committee substitute, as amended, was agreed to.

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 of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

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KLAMATH RIVER BASIN

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4712.

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

The assistant legislative clerk read as follows:

A bill (H.R. 4712) to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes.

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

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

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to be read a third time, read the third time, and passed.

Mr. STEVENS. 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.

GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY JUDGMENT DISTRIBUTION PLAN

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5430.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5430) to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan.

The PRESIDING OFFICER. The bill is open to amendment, if there be no amendment, the question is on the third reading of the bill.

The bill was ordered to a third reading, was read the third time, and passed.

Mr. STEVENS. 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.

SUPPLEMENT OF CERTAIN INDIAN CLAIMS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 965, H.R. 3526.

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

The assistant legislative clerk read as follows:

A bill (H.R. 3526) to provide for the settlement of certain claims respecting the San Carlos Apache Tribe of Arizona.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Select Committee on Indian Affairs, with an amendment.

Mr. STEVENS. I ask that the committee amendment be withdrawn.

The committee amendment was withdrawn.

The bill was read the third time, and passed.

Mr. STEVENS. 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.

ALASKA NATIVE LAND CLAIMS SETTLEMENT ACT

Mr. STEVENS. Mr. President, I say to my good friend from West Virginia that it is my hope we will be able to ask for consideration of my bill, H.R. 4162. I understand that there is some delay in this matter on the side of the distinguished minority leader. I hope we will be able to get to that bill next week. It is very timely.

I have been involved with this matter for some 15 years now. I urge his kindness and usual consideration of that problem in Alaska. I understand that he has a problem.

I ask the Senator from West Virginia if it would be agreeable at this time to ask unanimous consent that the Energy Committee be discharged from further consideration of that bill and that the bill be placed on the calendar.

Mr. BYRD. Mr. President, I will take the liberty, without having cleared this particular request, to accede to discharging the committee of the measure and putting it on the calendar. I do this to accommodate my good friend, the Senator from Alaska [Mr. STEVENS].

Mr. STEVENS. I am grateful.

I do make that request, that the committee be discharged and that the bill be placed on the calendar.

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

BANKRUPTCY JUDGES, UNITED STATES TRUSTEES, AND FARMER BANKRUPTCY ACT—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on H.R. 5316 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of U.S. trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of U.S. trustees in such cases, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1986.)

Mr. THURMOND. Mr. President, I am pleased that the Senate is considering today the conference report on H.R. 5316, the "Bankruptcy Judges, United States Trustees, and Family Bankruptcy Act of 1986." A great deal of work has gone into this report by House and Senate conferees and I congratulate all who have played a part in moving this important legislation forward.

Mr. President, as my colleagues are aware, many Federal judicial district have been swamped by the significant increases in bankruptcy filings and have sought needed relief. The legislation before the Senate will provide that relief by establishing 52 new bankruptcy judgeships.

This legislation will also provide relief by making the U.S. trustee system a nationwide, permanent program. The U.S. trustee system was enacted as a pilot program in 1978. By most accounts, this pilot program has been a resounding success—contributing greatly to the orderly and efficient administration of the bankruptcy system in the districts where it has been established.

Mr. President, I am also pleased that the conference report on H.R. 5316 includes initiatives to address the increasing economic problems that have confronted family farmers. I especially want to commend my distinguished colleague from Iowa (Mr. GRASSLEY,) for his fine leadership in the development of the family farm provisions of this bill. Those provisions represent an innovative approach to a crisis which has reached serious proportions.

This legislation creates new and expanded protections for a majority of American farmers in the bankruptcy courts. It is important, however, that we remember that the family farm provisions of this bill are an extraordinary response to what is, hopefully, a temporary crisis.

This legislation modifies the provisions of adequate protection by eliminating lost opportunity cost and the "indubitable equivalent" language of 11 U.S.C. 361 (3). In essence, this is an experimental approach to address the concerns of some farmers who can not be financially restructured under current law. To address the experimental nature of this legislation the Senate insisted upon a sunset provision. The Senate preferred a 5-year authorization, however, the conferees agreed upon a 7-year period in which to use chapter 12. I am strongly supportive of the "sunset" provision in the family farm program and I strongly disagree with those who favor making the program permanent. In fact, I would have preferred a shorter "sunset" period than the 7-year period which was finally included in the report.

The legislation is meant to assist those farmers who have the true potential to reorganize and to allow them relief from heavy debt burden, and yet allow farmers to pay creditors what is reasonable under today's difficult economic situation. The conferees intended to maintain the balance in farm communities between suppliers, creditors, and farmers.

It is recognized that creditors should not shoulder all the burden of the current farm crisis and that creditors are at risk as well. When administering this chapter 12, the courts should strive to preserve this equity balance between creditors' and debtors' rights. They should appreciate the possibility of harsh consequences to secured and unsecured creditors in providing financial relief to farmers. Attempting to balance the conflicting objectives of farmer debtors and agricultural creditors has been a monumental task at best. We have insisted on a number of provisions which are supported by the creditors. We believe these improvements enhance the balance and equity of this legislation. I am informed that because of these improvements the Farm Home Administration and the American Bankers' Association no longer oppose this legislation.

I believe it will be necessary for Congress to monitor this program very carefully and to be prepared to act quickly to resolve any unintended consequences of its enactment. Perhaps the conditions which have led the Congress to enact the program will ease, making repeal of the program desirable before the 7-year sunset. We must recognize that a novel program such as this may be in need of further refinement. So I favor enactment of the family farm provisions, and urge careful and continuing analysis by the Congress to ensure the balance between the various parties involved in the agricultural sector.

Mr. President, I want to take this opportunity to commend my colleagues who have worked so hard on this legislation. I mentioned Senator GRASSLEY and his fine work on the family farm provisions, Senators HATCH, DECONCINI, and HEFLIN have also played major roles in the refinement of this bill.

I also want to commend the House members who contributed greatly to this report—especially House Judiciary Committee Chairman PETER RODINO and Congressman MIKE SYNAR.

Mr. President, I also want to commend the staff members who have worked long hours to prepare this conference report. Of my staff, Diana Waterman and Joe Buzhardt; on Senator HATCH's staff, Randy Rader and Bob Friedlander; on Senator GRASSLEY's staff, Sam Gerdano; on Senator DECONCINI's staff, Bob Feidler; and on Senator HEFLIN's staff, Karen Kremer.

Mr. President, these staff members have done a fine job in preparing this bill for passage, and I commend them for their efforts.

I ask unanimous consent to have a letter in connection with this matter printed in the RECORD.

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

AMERICAN BANKERS ASSOCIATION,
Washington, DC, October 3, 1986.

Hon. STROM THURMOND,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN THURMOND: On behalf of the American Bankers Association, I wish to express our appreciation to you, Mr. Chairman, to your entire group of Senate Conferees, and especially Senator DeConcini, and your staff for the excellent work you have done on H.R. 5316, the U.S. Trustees/Banruptcy Judges bill.

As you know, earlier in this Congress, we testified in opposition to proposed farm bankruptcy legislation. Under your leadership, a number of key conference improvements were made to the legislation which we believe improves the balance between the concerns of agricultural creditors and farm debtors. Specifically, we strongly support the 52 additional bankruptcy judges, limitations to 90 days for debtors filing a plan, and the 7 year sunset of farm bankruptcy section.

Because of your assurances and that of Senator Grassley and Senator DeConcini to monitor closely the effects of this experimental legislation and assurances that you will address any major inequities in the next Congress, I wish to inform you that ABA does not oppose this legislation.

Again, we greatly appreciate the time and effort you and your excellent staff have devoted to the farm bankruptcy issue.

Sincerely,

EDWARD L. YINGLING.

FARM BANKRUPTCY SUBTITLE

Mr. GRASSLEY. Mr. President, I would like to briefly address myself to the farm bankruptcy subtitle of the conference report.

I am sure I need not remind the Members of this Chamber of the plight of our Nation's family farmers. The numbers of farms in financial trouble or on the brink of foreclosure is well known. But the measure of the crisis in agriculture isn't measured by cold numbers on a page. Instead, I measure it in terms of the human tragedy, the disruption of lives, and the despair of being a middle-aged farmer suddenly told to find another livelihood to support a family.

I hear it and I see it when I go back home every weekend. I know my colleagues have seen it too. We simply must stop the displacement. We must stop the bleeding on the farm.

Mr. President, I harbor no illusions about the ability of the Federal Bankruptcy Code to redress farmers' grievances. I know as well as anyone that the economic causes of the crisis in agriculture lie well beyond the realm of bankruptcy.

But hearings in the House and Senate led to the unmistakable conclusion that the Bankruptcy Code doesn't work for farmers.

The conference report subtitle on family farmer reorganization, approved by the conferees last Friday, is the culmination of more than 1½ years of effort by the House and Senate Judiciary Committees. The final product reconciles the unique attributes of farming into an existing bankruptcy framework, currently used by other small businesses and sole proprietors.

The subtitle creates an experimental, separate, chapter modeled after existing chapter 13, solely for use by family farmers with up to $1.5 million in debts.

Though the purpose is to give family farmers a fighting chance to reorganize their debts, the provisions ensure that only family farmers—not tax shelters or large corporate entities—will benefit.

Importantly, the new subtitle ensures that the bankruptcy system will not be abused. Earlier versions of this new chapter allowed a farm-debtor 240 days to file a plan. During this time, collateral could deteriorate without the promise of a confirmable reorganization plan. To address this problem, the exclusive period has been reduced to 90 days in the conference approved bill.

If time limits are not met, the case will be dismissed and cannot be refiled. This will be a powerful incentive to get these cases moving, rather than languishing in the courts. If fraud is found, the case will be dismissed or converted to chapter 7. This encourages good faith, and honest dealing by the debtor throughout the case.

The subtitle also contains a 7-year sunset, ensuring that Congress will reevaluate its effectiveness in allowing farmers to rehabilitate themselves. Let me add that I'd be the first to be willing to rethink provisions of this bill, if it proves to be unworkable. But I sincerely believe this will not be the case. It's a good, balanced product. It deserves a chance to work.

Mr. President, before leaving this bill, I would like to add my thanks and appreciation to those conferees who worked with me on this issue. First, I must thank the chairman of the Senate Judiciary Committee, Senator THURMOND, for his leadership and cooperation throughout this process. Diana Waterman, his general counsel, was of immeasurable assistance in the development of this final product. I would also like to thank Joe Buzhardt, counsel to the chairman, for his help. I would also thank Senator DECONCINI, a cosponsor of my original chapter 12 bill, and his chief counsel, Bob Fiedler. I would also specifically thank Senator HEFLIN, who I know cares deeply about the application of our bankruptcy laws to farmers, and his chief counsel, Karen Kremer.

I cannot leave this list of "thank you's" without recognition of Bankruptcy Judges A. Thomas Small and Thomas Moore of the Eastern District of North Carolina. Their collective wisdom and experience have been critical to enactment of this legislation.

Finally Mr. President, I ask unanimous consent that a law review article by John C. Anderson, an attorney from Baton Rouge, LA, be printed in the RECORD at the conclusion of my statement. This article contains a detailed analysis of existing bankruptcy laws, and persuasively argues that these laws are inadequate for family farmers. I am confident that we have here taken a step to remedy this inadequacy.

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

AN ANALYSIS OF PENDING BILLS TO PROVIDE FAMILY FARM DEBTOR RELIEF UNDER THE BANKRUPTCY CODE

(By John C. Anderson*)

("The business of farming has always been subject to unpredictable financial problems, especially since the farmer's crops may be endangered by weather, insects, and natural disasters. Additionally, farmers face the normal problems of all business men, which may be increased by unusual changes in the economy. All businesses have suffered recently from increases in interest rates, fuel shortages, declines in prices offered for goods, inflation, and other general economic problems, and the farmer is no exception. In fact, the farmer's prospects have become even more bleak over the past two years, and his present and future financial problems are becoming a topic of national concern." [1])

I. INTRODUCTION

In 1982, this writer predicted that the financial problems and economies of the farming industry would rise to a level of national concern and that the exist-provisions of the Bankruptcy Code [2] were not adequate to deal with the problems of farmers and to reorganize them financially.[3] These predictions have come true, and the farming industry has virtually collapsed. The income derived by farmers from their crops has not been sufficient to keep up with the costs of operation, after taking into consideration the capital necessary to conduct the business and the natural disasters attendant with the business of farming.[4]

Because these dire predictions have become true, there is legislative movement in Congress to remedy the farmers' plight through amendments to the Bankruptcy Code which would give farmers financial relief.[5] This article will analyze the problems unique to farmers (creating their need for relief), pending family farm relief bills and legislation before Congress, and the provisions of the competing bills which should be adopted by Congress.

II. FINANCIAL PROBLEMS UNIQUE TO FARMERS AND NEED FOR RELIEF

All businesses are vulnerable to over-all economic problems, such as inflationary spirals, increases in interest rates, competition

Footnotes at end of article.

*Mr. Anderson received his J.D. from Louisiana State University Law School in 1972 and practices law in Louisiana with the firm of Due, Anderson & Adams. He is an associate member of the National Bankruptcy Conference and a member of its Committee on Farmer Insolvency. This article was prepared in conjunction with Mr. Anderson's work as a member of the Committee on Farmer Insolvency, and pursuant to a special request from counsel for the Committee on the Judiciary of the United States Senate to comment on the proposed family farmer bankruptcy bills. The National Bankruptcy Conference (the "Conference") is a voluntary organization composed of persons interested in the improvement of the Bankruptcy Code and its administration. It was formed in 1932 in connection with the 1938 revision of the Bankruptcy Act and has been active since that time on virtually all amendments to bankruptcy law. Members of the Conference include bankruptcy attorneys, law professors, and judges. On March 21, 1986, the Conference, composed of approximately sixty members and associates, met in Dallas, Texas for its mid-year meeting. The Conference's Committee on Farmer Insolvency reported to the Conference on the proposed bills pending before Congress pertaining to farmer insolvency and relief. This article is an analysis of that report and the Conference's proposed family farmer bill in comparison with the competing bills. This article represents only the position of Mr. Anderson, and it does not represent necessarily the position of the Conference or the Committee on Farmer Insolvency. All members of the Conference are free to take positions contrary to this article on any issue in representing a client, in court decisions, in legal publications, or otherwise. Mr. Anderson wishes to express his appreciation to the Committee on Farmer Insolvency for its help and particularly to Messrs. Herbert H. Anderson, Frank R. Kennedy, and Joe Lee for their comments and contributions to this article. The Committee on Farmer Insolvency of the National Bankruptcy Conference is composed of Messrs. Herbet H. Anderson (Chairman), Frank R. Kennedy, Lawrence P. King, Joe Lee, Morris W. Macey, Dennis Montali, Patrick A. Murphy, Gerald K. Smith, and John C. Anderson. Insight was also provided the author by Jeffrey W. Morris, Professor of Law, University of Dayton School of Law.

for loans, depressed economic markets, and similar problems. In addition to this, farmers must deal with special problems beyond their control, such as natural catastrophies. For example, inclement weather, insect infestation, and similar problems may cause farmers to lose all or part of their crop. Such natural disasters may further alter soil make-up and cause erosion to farms. All of these create unique, unpredictable financial problems for farmers.

Until recent years, many farmers were able to generate internally sufficient profits to provide their own working capital. However, the downturn in prices for crops in comparison to the increase in costs of production have diminished net profits, and recent natural disasters have caused farmers to produce low crop yields. The decrease in profits and yields has precluded the creation of internally-generated working capital to provide an ongoing base of financial operations. Further, the decrease in profitability has caused normal commercial lenders to be inhibited to make loans to farmers. This situation has caused the following results.

First, the low profitability of farmers has curtailed normal borrowing sources. Many banks and normal commercial lenders have ceased making crop loans or other working-capital loans secured by farms and farm equipment. This has precluded normal sources of working capital for farmers.

Second, to offset this situation, the federal government has instituted programs over recent years to provide loans to farmers at low interest rates, but these superficially attractive programs have had their own disadvantages. This borrowing has provided needed working capital, but it has encouraged borrowing by farmers and has thus caused many farmers to become over-leveraged, that is, top-heavy with debt. Further, such federal agencies normally require secured interests in virtually all of the farmer's assets, thereby leaving the farmer with little flexibility or collateral for other borrowing. Many farmers have utilized these programs and become heavily burdened with debts. Thus, many farmers are entering 1986 heavily in debt to federal agencies as well as to commercial lenders.

Third, as mentioned above, farmers are particularly subject to problems with weather. Even though these changes in weather can be predicted to some degree, there is no safeguard for the farmer against extremely wet conditions (which may inhibit cultivation or preclude harvest of crops), and only farmers with irrigation systems can be protected from droughts. Both droughts and rain can prevent germination of a crop, can inhibit crop growth, and can cause destruction of some or all of the crop. Further, excessive rain may prevent harvesting and thereby cause the loss of an entire crop that has matured. Such weather problems only serve to increase the crisis facing over-leveraged farmers.

Fourth, farmers affected by the federal government's domestic and foreign policies concerning purchase and sale of crops. Federal agencies have traditionally purchased commodities for storage as specific support prices. Further, these agencies have paid farmers not to plant crops and have extended emergency loans for losses caused by natural disasters. Thus, our federal government has played a substantial role in determining the aggregate productivity (e.g., crop yield) of the American farmer, as well as the prices received for farm products. Because of these federal policies and over-production created by them, the prices of commodities are at a very low amount in relating to the capital costs of (a) acquiring farms and farm equipment and (b) running a farm operation. In other words, the return to the farmers for their crops, in relation to their capital investment, is minimal at best. The programs of the federal government have inhibited the ability of the American farmer to work in a free enterprise system and gain a sufficient reward (through profits) for the risk (relative to capital investment) of his operation.

A farmer can never predict his net income from his crops until they are sold and funds actually received, and when the crop proceeds are actually received, they are cyclically received (usually on an annual basis)[6] and often less than needed.

Many farmers are in a precarious position and the value of much farm property has depreciated to a fraction of its prior worth and initial cost. The lack of profitability has further prevented many farmers from paying their obligations as they mature. This has created an unprecedented collapse in the farming community and farm-related businesses. In turn, a collective default in farm-related obligations has triggered an unprecedented number of foreclosures. Ultimately, the forced liquidation of farms which are over-burdened with debt may create a tremendous loss of equity or value in farms for both farmers and their lenders by flooding the market with foreclosed farms for sale.

III. PRIOR LEGISLATION UNDER THE OLD BANKRUPTCY ACT

A. A Historical Overview

Reorganization cases have the purpose of rehabilitating businesses and businessmen, and these proceedings normally envision the readjustment of the debt/capital structure of an enterprise and its continuation in business, as opposed to the liquidation and dismantling of the enterprise.[7] Forced liquidations of business enterprises may cause unnecessary losses in propety values.

The first three federal bankruptcy acts[8] were designed entirely for liquidation and contained no provisions for the rehabilitation of the debtor and preservation of his business.[9] An amendment to the third bankruptcy act providing rehabilitative relief was short-lived.[10] The fourth act, passed in 1898 (the old Bankruptcy Act),[11] was also inadequate in this regard, since the composition device offered under section 12 of the old Act[12] provided only limited relief for small debtors.[13] Section 12 was insufficient for rehabilitating either large corporate entities or farmers.[14]

Hence, there were no adequate rehabilitation statutes available for either businesses or farmers until 1933, when Congress enacted certain statutory rehabilitation provisions.[15] Remington [16] has explained this historical event as follows:

"Section 75 was added to the Bankruptcy Act March 3, 1933 in the midst of the Great Depression. It formed a part of a new Chapter numbered VIII and entitled "Provisions for the Relief of Debtors." Three forms of relief were established. Section 74, now Chapters XI and XII, dealt with Arrangements. Section 75 provided Relief for Farmers. Section 77 established Railroad Reorganization. On June 7, 1934, § 77B has become Chapter X. All of these Relief Sections or Chapters had a common purpose—to facilitate recovery from the depression." [17]

The initial reorganization statutes, which were contained in sections 74, 75, 77,[18] and 77B [19] were passed during the Depression for the purpose of correcting the defective receivership procedure and replacing it with a comprehensive, statutory method of effecting rehabilitations.[20] There was some argument that these sections were strictly emergency legislation, were passed to provide immediate statutory relief, and were poorly drafted because of the haste in their preparation and enactment.[21] Whether this argument is accurate is beyond the scope of this article; however, the reader should note that the legislative movement to enact a more appropriate statutory system for rehabilitation of financially troubled entities continued until 1938, when the Chandler Act was passed.[22] This Act repealed sections 74 and 77B.

However, the Chandler Act did not repeal section 75, which was the primary statutory vehicle for the rehabilitation of farmers both before and after enactment of the Chandler Act.[23] Rather, this section was maintained in force until March of 1949 and was not made a permanent part of the Bankruptcy Act of 1898 for various reasons.[24] In other words, section 75 was maintained as a separate rehabilitative device and was extended through March 1, 1949, when it expired because it was not renewed by Congress.[25]

Section 75 will be explained in greater detail later, but it should be noted that no relief was expressly provided by Congress for farmers until their problems became particularly acute during the Depression. The elixir for the farmers' dilemma was initially the creation of section 75 and subsequently its amendments. The same farmer problems appear to be reoccurring presently.

Rehabilitation for farmers was also available, and especially after the expiration of section 75, through Chapter XII[26] of the Bankruptcy Act. However, Chapter XII was rarely used by farmers or other debtors to gain relief and rehabilitation,[27] and only one reported case[28] of any importance has been found by this writer where Chapter XII was used as the vehicle for rehabilitation of a farmer's finances. Hence, after the Depression and World War II, the primary statute for rehabilitation of farmers terminated, and Congress has not since then created a statutory vehicle expressly to alleviate agriculture's peculiar hardships.

In particular, there are no statutory provisions in the new Bankruptcy Code oriented to rehabilitation of farmers. The relief available for farmers is the same as accorded businesses and businessmen in general under Chapter 11 of the new Bankruptcy Code.[29] This is unfortunate because farmers are presently experiencing especially great financial problems because of weather, inflation, and a general downturn in the economy, thereby causing a special need for relief. The old statutory means for farmers rehabilitation under section 75 are no longer available to farmers, and the new relief available to farmers under the new Bankruptcy Code is inadequate to solve many problems unique to farmers. However, it would be appropriate to contrast the old rehabilitative provisions with existing, available means for financial relief for farmers. This analysis will also make certain observations on the alternatives not presently available to farmers for rehabilitation of their financial affairs and what special provisions oriented to specific farmer problems might be needed.

B. Legislative Movement Causing Enactment of Section 75 and the Frazier-Lemke Act

On March 3, 1933, section 75 was added to the Bankruptcy Act for the purpose of permitting compositions and extensions for the benefit of farmers, similar to those provided for in section 74 for the benefit of individuals and partnerships.[30] Upon the filing of the farmer's petition under section 75, he and his property were brought under the exclusive jurisdiction of the Bankruptcy Court, regardless of the property's location, and all proceedings against him or his property were automatically stayed.[31]

The chief purpose of the provision was to make relief available for farmers whose affairs did not warrant or require liquidation.[32] Section 75 provided initially for composition or extension agreements that could be requested by the debtor and agreed to by a sufficient number of creditors.[33]

Much of the commentary regarding the legislative history of section 75 indicates that this legislation was passed over the strenuous objection of various lenders.[34] Creditor-oriented interest groups argued that the legislation was a menace to the national credit structure, that it would afford no real relief to debtors for whose benefit it was intended, that the provisions were ambiguous, that the legislation was unworkable, and that statutory relief was destructive of creditors' rights.[35] Notwithstanding these arguments, other commentary during this era suggested (a) that relief was necessary due to a steady decline in farm prices before the Depression (which was accelerated thereafter), due to a deflation in land values and due to the constantly increasing burden of taxes; and (b) that the fears of the credit industry proved to be unfounded, because the implementation of section 75, as initially enacted, proved to be so cumbersome that any alleged harmful effects were negated by the inability of farmers to use the statue.[36] As initially drafted, section 75 was largely ineffectual as a vehicle to rehabilitate farmers; therefore, Congress moved to amend it one year after its enactrment.

Criticism and irritation over the passage of section 75 in 1933 was heightened when Congress subsequently added subsection (s) to section 75 on June 28, 1934, to create what is commonly referred to as the first "Frazier-Lemke Act." [37] This amendment to section 75 significantly enhanced the relief available to farmers by impairing the rights of secured creditors to foreclosure upon farm land.[38] Prior to the Frazier-Lemke Act, the farmer could only propose compositions and extensions; if these were not approved by the creditors and the court, he was forced to dismiss his proceeding or be adjudicated into straight bankruptcy.[39] The Frazier-Lemke provisions gave the farmer increased rights in the event that the creditors and court did not approve any proposed composition or extension. Specifically, if the composition/extension was not approved, the farmers was adjudged a bankrupt, but was given a moratorium of five to six years within which to buy back his property from the court and his creditors.

Upon adjudication the farmer could request that all of his property, whether pledged, encumbered, or unencumbered, be appraised and that his exemptions be set aside, subject to liens thereon.[40] The farmer then had two options by which he could redeem all or part of his property. Under one option, with the consent of those holding liens on the property redeemed, the farmer would pay the appraised value in an installment plan over a period of six years while retaining possession of his property. This repayment over six years was conditioned upon acceptance of such redemption or buy-back by the secured creditor affected; [41] and if the secured creditor objected to this partial-payment plan of purchase by the farmer, a second course of action was available.

Under the second option the court would stay all proceedings for a period of five years, allowing the farmer to retain possession of his property upon payment of only a reasonable rental and allowing the farmer to buy his property at the end of the five-year period by paying its appraised or reappraised value.[42] Therefore, under either option, the Frazier-Lemke Act had the "controlling purpose of . . . [preserving] to the mortgagor the ownership and enjoyment of the farm property . . . and the avowed object . . . to take from the mortgagee rights in the specific property held as security; and . . . 'scale down the indebtedness' to the present value of the property." [43]

Secured creditors could retain their liens up to, but not exceeding, the appraised value until paid. Unsecured creditors were given a general lien subordinate to prior liens, but in no case could creditors thereafter assert, either against the farmer or his property, claims for an amount in excess of the appraised value of the property at the time of the filing of the petition. Therefore, the usual avenues available to secured creditors for realizing on their collateral were closed upon the filing of the farmer's petition, and both secured and unsecured claims were scaled down to the appraised value of the collateral retained by the farmer, and the excess unsecured (*e.g.*, undersecured) portions were discharged.[44]

Prior to the enactment of section 75 in 1933 and the Frazier-Lemke Act in 1934, bankruptcy proceedings did not generally affect secured creditors at all, and the bankruptcy trustee took only such interest as the bankrupt might have transferred.[45] However, the Frazier-Lemke Act had the express purpose of impinging upon the rights of secured creditors, since its main premise was to provide a moratorium for farmers to relieve them from overburdening mortgage indebtedness and the harshness resulting from a loss of their farms through foreclosure in a period of unprecedented depression.[46]

As Remington pointed out, forced liquidations of a debtor's estate, as in ordinary bankruptcy, have generally caused unnecessary losses,[47] and where these losses have prevented farmers from cultivating their land and producing crops, the entire national economy has been affected.[48] Moreover, after the depression had abated, the strain placed upon our economy by subsequent world-wide hostilities [49] caused section 75 to be continued and extended as emergency legislation until 1949.[50]

Therefore, in placing the enactment and amendment of section 75 in historical context, the reader must bear in mind that (a) the difficulties of farmers in the midst of the Depression were extraordinarily severe, (b) the Populist sentiment was "anti-big business," (c) lenders were viewed with suspicion,[51] and (d) the worldwide problems of war caused the statute to remain in force until after World War II.

C. Supreme Court Cases

The farm relief provided by Congress, especially under the Frazier-Lemke Act, created some of the most significant decisions regarding the authority of Congress under the bankruptcy power of the Constitution to impinge upon the rights of secured creditors. The history surrounding the invalidation of the initial Frazier-Lemke Act in 1935, and its subsequent reenactment and validation, can be traced through a trilogy [52] of significant and unprecedented Supreme Court decisions, beginning with *Louisville Joint Stock Land Bank v. Radford.*[53]

In Radford, the debtor (Mr. Radford) filed for relief under section 75 in 1933 after defaulting on his loans to the Louisville Joint Stock Land Bank. Under the original foreclosure by the bank preceding the bankruptcy filing, a receiver had taken control of the mortgaged property. The debtor's petition was approved and a meeting of creditors was held, but the debtor failed to obtain the acceptance of the requisite majority in number and amount to the proposed composition. The bank offered to accept the deed of the mortgaged property in satisfaction of its debt and to assume the unpaid taxes, but the debtor refused to execute the deed.

Meanwhile, section 75 was amended by the Frazier-Lemke Act, and Mr. Radford filed amended petitions for relief under the new Act. This relief was attacked by the bank but was upheld by both the United States District Court for the Western District of Kentucky [54] and the Court of Appeals for the Sixth Circuit.[55] Finally, the United States Supreme Court invalidated the amendment to section 75 known as the Frazier-Lemke Act and the relief that it made available to farmers.[56]

In essence, in the Radford case the bank refused the composition and extension proposal offered by the debtor, and after the debtor elected under the Frazier-Lemke Act to be adjudged a bankrupt, the bank declined to consent to the proposed sale to the debtor at the appraised value under option one of the Act (which provided deferred payments over six years). The debtor was thereby relegated to option two, which provided for an appraisal of property, a five-year moratorium, and the right of debtor to buy the property at the appraised (or reappraised) value during the five-year period.

In striking down section 75, the Supreme Court noted seven critical points.

First, the debtor was allowed to redeem the property during the five-year moratorium for an amount less than the full mortgage debt. This was contrary to the general rule that a debtor could redeem his property free and clear of a mortgage debt only by paying the entire mortgage debt.[57]

Second, the sale to the debtor during the five-year period did not provide for or allow the mortgagee to bid his claim in against the property. Therefore, the act effected an exclusive sale to the farmer free of liens when the amount of the encumbrance exceeded the property. This ran contrary to the normal bankruptcy rule that a court should not authorize a sale at a price less than that which the lien creditor offered to pay for the property.[58]

Third, the Frazier-Lemke Act effected a fundamental change in the scope of the normal bankruptcy powers and impinged directly on the rights of secured creditors. In fact, the Supreme Court stated that the Act was the first step in a congressional attempt through the bankruptcy powers to abridge the substantive rights of a mortgagee in property held as collateral solely for the benefit of a mortgagor.[59]

Fourth, the Court held that the bankruptcy powers granted to Congress in the Constitution were subject to the prohibitions of the fifth amendment, forbidding the taking

of property without due process of law;[60] noting that the powers to regulate war, taxes, commerce, and aliens were also subject to the fifth amendment, the Supreme Court reasoned that secured creditors were given too little protection for their property rights under the Frazier-Lemke Act."[61]

Fifth, the Court determined that the Frazier-Lemke Act had the express and avowed purpose to take from the mortgagee various rights in specific property and that the cumulative effect of the Frazier-Lemke Act was the abridgement of sufficient rights to constitute a taking of property in violation of the fifth amendment.[62] The Court found that, under Kentucky law, the following property rights were taken from the bank.

1. The right to retain the lien until the indebtedness thereby secured is paid.

2. The right to realize upon the security by a judicial public sale.

3. The right to determine when such sale shall be held, subject only to the discretion of the court.

4. The right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself.

5. The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.[63]

The court found that the "taking" of these rights under the Frazier-Lemke Act contravened the fifth amendment.[64]

Sixth, the Court noted that the only apparent right under the mortgage left to the bank was to retain its lien until sometime within the five-year period the mortgagor chose to release the lien by payment of the appraised value of the property.[65] Rejecting the argument that the dispossession of property during the five-year period was not injurious to the bank and that there was protection for the rights of the lender, the Court stated that there were fundamental differences in the delays and procedures under the Frazier-Lemke Act and the delays and procedures under prior bankruptcy legislation.[66]

Finally, the court declined to determine whether the substantial changes created by the Frazier-Lemke Act were arbitrary or unreasonable as being part of permissible public policy, reasoning that the central issue was whether the Act, as applied, took from the bank without just compensation (and gave to Radford) rights in specific property that were of substantial value.[67]

Based upon all of the above, the Court held that the Frazier-Lemke Act was unconstitutional. Significantly, the Radford case did not hold that the deprivation of a mortgagee by bankruptcy provisions of any one of the five property rights enumerated in that case would necessarily render the legislation unconstitutional.[68] Also, the entirety of section 75 was not nullified but only the provisions added by the Frazier-Lemke Act that were subsections.[69]

Thus, promptly after the Supreme Court's decision in Radford, Congress passed the second Frazier-Lemke Act in 1935 to correct the faults in the first Act.[70] Remington briefly summarizes the changes effected in the second Frazier-Lemke Act as follows:

"The Second Frazier-Lemke Act gives bankruptcy courts the power after the adjudication of the farmer to grant possession of all property and a three-year stay on payment of rental to be fixed by the court plus payments on principal if within the farmer's ability with the privilege of redeeming the property at the end of the three years or prior thereto at appraised or reappraised value. Secured creditors subject to the farmer's right of redemption were given the right to a sale at public auction. If the farmer defaulted during the stay or failed to redeem at the end thereof the court was authorized to appoint a trustee and proceed in ordinary bankruptcy".[71]

The new legislation prompted a new round of Supreme Court cases concerning challenges to the constitutionality of the new Frazier-Lemke Act. In *Wright* v. *Vinton Branch of the Mountain Trust Bank*[72] (Wright I) and *Wright* v. *Union Central Life Insurance Co.*[73] (Wright II), the Supreme Court upheld the new amendments.

Both Wright I and Wright II involved the same farmer-debtor and the same 200 acre tract of land located in Virginia. These cases reflect the changing attitude of the Supreme Court regarding the policies underlying the legislation (and especially the seriousness of the farmer's plight), the statutory relief necessary to rehabilitate farmers, and the breadth of the constitutional powers granted to Congress under the bankruptcy clause to provide the needed relief.

In Wright I, the Virginia farmer had given a deed of trust (i.e., a mortgage) to secure a debt held by the Vinton Branch of the Mountain Trust Bank. The debt secured by the deed of trust was in default and the property had been advertised for sale pursuant to the deed of trust and the provisions of Virginia law. To prevent the pending foreclosure of the farm land, Mr. Wright filed a petition under section 75 of the Bankruptcy Act. The foreclosure was stayed, and the debtor made a proposal for a composition that was unacceptable to the bank. Subsequently, Mr. Wright filed an amended petition under the new Frazier-Lemke Act and asked that he be adjudicated a bankrupt and receive the benefits of the recently amended Act. Thereafter, on appeal the district court held the new Act to be unconstitutional. This ruling was affirmed by the court of appeals, but the Supreme Court reversed.

The tenor of the Supreme Court's rationale in Wright I was strikingly different from that in Radford. It is submitted that the opinion rendered in Wright I reflected a clear shift in the Supreme Court's view of public policy, indicating a more liberal balancing of the need for farmer relief against the need for protection of the rights of secured creditors, with the balance clearly turned in favor of farmer relief. The Court began its decision with the proposition that Radford did not question the power of Congress to offer aid to distressed farmers by the means of a rehabilitation under the Bankruptcy Act; rather, the Court reasoned that the first Frazier-Lemke Act was declared unconstitutional "solely on the ground that the bankruptcy power of Congress, like its other great powers, is subject to the fifth amendment; and that, as applied to mortgages given before its enactment, the statute violated that Amendment, since it effected a substantial impairment of the mortgagee's security."[74] Thus, the decision centered more on the degree to which Congress exercised its power under the initial Act, rather than on its authority to exercise this power vel non.

The Court went on to state that its prior decision in Radford did not hold that the deprivation of any one of the enumerated (five) important substantive property rights would render the bankruptcy provisions invalid; rather, the effect of the prior statute was to deprive the mortgagor of the entirety of the five rights enumerated in the decision. The decision then discussed the changes that Congress had made in the Frazier-Lemke Act to preserve the mortgagee's rights.

First, there was congressional movement to leave the lien wholly unimpaired.[75] Creditors were allowed to retain their lien up to the actual value of the property, as fixed by appraisals, and the new statute provided for a public sale in the discretion of the Court upon request of the secured creditor under appropriate circumstances.[76]

Second, the legislative intent was clear that the mortgagee was allowed the right to protect its interest in the property by bidding its lien claim at such sale, if held.[77]

Third, the Court rejected the proposition that the mortgagee should have the absolute right to determine what a sale should be made within the new three-year moratorium.[78] The Court reasoned that the three-year period of rehabilitation provided under the statute was not unreasonable, nor absolute, since a court might terminate the stay and order a sale at an earlier date. Further, the debtor's right to retain the property was conditioned upon his compliance with the orders of the court, which would include the right of the court to require reasonable rental payments from the debtor semiannually and to apply the payments to claims held by secured or unsecured creditors. Also, the possession of the debtor, rather than the mortgagee, was conditioned upon the existence of an emergency in each locality within which the Act would be implemented, and upon the cessation of any emergency, the court could shorten the stay proceedings provided and immediately proceed to liquidate the estate.[79]

Fourth, the right of the mortgagee to control the property during default and have the rents and profits collected by a receiver for the satisfaction of its debt was rejected.[80] The Court reasoned that possession by the debtor, rather than a receiver, was reasonable and that the provision for the payment of rental by the debtor were also reasonable.

Fifth, and finally, the Court rejected the contention that the delay in enforcement of the mortgage for an approximate three-year period was unreasonable, and the Court held that the other modifications of creditors' rights were reasonable.[81] Essentially, the court held that the new Act did not modify secured creditors' rights, whether remedial or substantive, to such a degree as to deny the due process of law guaranteed by the fifth amendment. Hence, it held the new Act to be valid and constitutional.[82]

Approximately three years later, Mr. Wright again appeared before the Supreme Court in the Wright II decision.[83] In the second case Mr. Wright had experienced problems in gaining the relief necessary for his rehabilitation. Apparently, Mr. Wright had been granted the three-year moratorium under the second Frazier-Lemke Act, which embodied the rights to have his property appraised and to redeem it from the Court during the three-year moratorium. However, the facts of the decision indicate that shortly after being adjudged a bankrupt and being given the three-year period of redemption, a creditor, Union Central Life Insurance Co., had challenged the right of redemption by filing a petition praying that the proceeding be dismissed or, alterna-

tively, that an immediate public sale be held. The debtor opposed the petition and filed a cross petition in which he sought to have the land appraised, to be allowed to redeem it at the appraised value, and to be discharged of any liability created through a deficiency in the sales price.

The narrow issue presented to the Supreme Court was whether Mr. Wright should be accorded the exclusive opportunity, on his request, to redeem the property at either a reappraised value or value fixed by the Court prior to the lower court's ordering a public sale at which creditors and third parties could bid for the debtor's farm. The lower courts had denied him this right, holding that Mr. Wright had no hope of rehabilitation, had disobeyed orders of the court, and was not entitled to a reappraisal and redemption of the property.

The argument focused upon whether the debtor should have the right (to be exercised solely by him) to redeem the property at the value fixed by the court under the first proviso of section 75(s)(3), before denying him this exclusive right and offering the property via public sale to any other party under the second proviso of section 75(s)(3). In other words, if the court had granted the debtor's cross-petition, he would have been entitled to the sole right to have a reasonable time, fixed by the court, within which to redeem the property at its value and have it turned over to him free and clear of encumbrances, with his discharge being granted as part of the rehabilitation program. Only in the event the debtor failed to redeem within the fixed period of time (or disobeyed court orders) would the court authorize the public auction at which the secured creditor could bid its claim in as part of the auction price.[84]

The Court rejected the argument that there was a conflict between the provisions, holding that the Act must be liberally construed to give full relief to farmer-debtors. Thus, the rights of the debtor under the first proviso were held to override the rights of the creditor under the second proviso.[85]

The Court rejected the argument that giving the debtor the exclusive right to purchase the property at the appraised value, rather than allowing the mortgage holder to bid his mortgage claim at a public auction and purchase the property at the full value of the secured claim, was unconstitutional. The only constitutional right given to the mortgagee, the Court held, was to realize the full amount of the fair market value of his collateral and that he had no constitutional right to bid on his collateral or receive more than its appraised value.[86]

Moreover, the Court reasoned that Congress had not empowered it to deprive the farmer-debtor of his express and fundamental statutory right to redeem his property at the reappraised value, and if a court held otherwise, this "would be to imply a power of forfeiture wholly incompatible with the broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression." [87] Therefore, the Court ultimately reasoned that Congress had the right, under the bankruptcy power, to take away certain property interests of creditors within constitutional limits in order to provide a comprehensive rehabilitation program for farmers during widespread conditions of economic depression. Such remedial and rehabilitative rights were held to be proper and not to be denied due to suggestion of a contrary legislative intent.

The majority opinion clearly stated that there was no impropriety in denying the creditor the right to utilize all of his indebtedness in bidding for its collateral at a public sale, while granting the debtor the prior exclusive right to redeem the property from the Court at only its appraised value, which could be significantly less than the debtors owed to the objecting mortgage holder.[88]

D. Analysis and Conclusions for Section 75

It is submitted that there are several propositions that might be extracted from this trilogy of decisions. First, and most obviously, the bankruptcy powers of Congress were apparently held by the Supreme Court to be limited by the prohibitions of the fifth amendment; any legislation completely and retrocatively abrogating the fundamental rights of secured creditors might pass the bounds of constitutionality.[89]

Secondly, and within these initial broad generalizations, it is equally clear that Congress has been given the constitutional power to enact comprehensive legislation, if it so desires, expressly designed to (a) enable the farmer to keep his farm land and (b) allow him to rehabilitate himself through his labor and efforts in the face of depressed economic conditions. Specifically, the ultimate thrust of the second Frazier-Lemke Act was to permit financially distressed farmers to retain their land over a minimum of three years, to be granted a moratorium in paying creditors, to be required to pay only a reasonable rental set by the court, to be allowed to work their land in an attempt to gain refinancing or other financial help, and to be required to pay only the appraised value of their property redeem it, rather than the full amount of any burdensome mortgage debt. This last factor is especially important, since the Depression appeared to create a deflation in the fair market value of farm land. The deflation in farm values, when coupled with the overburdening farm debt existing prior to and during the Depression, put the farmer in a straitjacket: he was simply not able to produce enough from the sale or refinancing of his farm, especially in a forced liquidation, to pay off the entire mortgage indebtedness, including accrued interest. Since farmers are experiencing the same economic and financial crisis today, this same basic farmer relief is probably necessary in order for farmers in today's economy to rehabilitate fully their finances. Thus, the concepts underlying section 75 are persuasive guides to the legislative proposals presently pending before Congress.

E. Farmer Debtor Relief Available After Expiration of Section 75

Section 75 of the Old Bankruptcy Act, as has been noted, was not made a permanent portion of the Act, and it expired on its own terms after 1949.[90] By 1950 and thereafter, the emergency situation created by the Depression and World War II had ended. Thus, the rehabilitation of individual farmers and farms owned by partnerships was provided under Chapter XII of the old Act,[91] and individual farmers and corporate farmers might find some rehabilitative relief under Chapter XI under the old Act.[92] However, since secured debts could not be altered under a Chapter XI arrangement plan,[93] the obvious vehicle for restructuring the farmer's finances was Chapter XII of the Act, which allowed an arrangement plan to alter both secured and unsecured debts.[94].

Fortunately, since World War II, America's economy has substantially prospered, and there were very few petitions filed by farmers or any other debtors under Chapter XII of the old Act, until the real estate recession of 1974–1975.[95] Thus, Chapter XII was seldom used as a vehicle for rehabilitation by any entities until 1974. However, during the early 1970's there was a "boom" in real estate and its financing; and overbuilding, inflation, and spiralling interest rates caused a severe recession in the years of 1974–1975, which precipated an unprecedented increase in filings of real property arrangements.[96]

The increase in filings of real property arrangements during 1975–1978 was caused more by the building boom in apartment projects, hotels, and similar real estate projects, than by economic problems peculiar to the farming industry. After the 1974–1975 recession, however, there was a short upswing in the nation's economy and then a downturn, beginning at the end of 1978. Our nation has since been faced with a severe recession that has lasted several years and that has resulted in depressing segments of the economy and experiencing unprecedented financial difficulties for reasons stated previously.

The relief that was available to farmers prior to the enactment of the new Bankruptcy Code in 1978 can be appreciated by comparing the relief available under section 75 in "emergency" conditions (created by the Depression and World War II) existing between 1933–1949 to the relief available under Chapter XII in "non-emergency" situations existing between 1950–1979.

A recapitulation of the relief available under section 75 is as follows:

(1) The farmer-debtor could petition for relief, propose a composition or extension, and attempt to gain acceptance and approval of it by his creditors and confirmation by the court.

(2) If the creditors refused the composition or extension offered, the farmer-debtor could be adjudged a bankrupt and have one of two options to repurchase his farm. Under either option, the farmer-debtor would have his property appraised and his exemptions set aside to him.

(4) Under the first option, the farmer-debtor would be required to pay interestate of one per cent of the appraised value of the property that he desired to retain during the first year; he would then have a graduated repayment schedule by which he could purchase the property that he retained at the full appraised value, but with little interest, over a total period of six years. This option required the consent of those holding liens on the property retained by the farmer.

(5) If the lienholders failed to consent to the first option, or if the farmer desired the second option, he was allowed a second option, consisting of a three-year moratorium, during which time he would retain possession of his property, farm his land, pay a reasonable value to be set by the court (the rental would be allocated in payment among his creditors), and have the exclusive right to buy his property from the court at its appraised value, so long as he complied with the orders of the court. The appraised value was the amount fixed by the court upon adjudication, unless there was a subsequent reappraisal at or before the redemption of the property.[97]

(6) Under section 75, as amended by the Frazier-Lemke Act, there was an express grant to the farmer-debtor of the exclusive right to buy his property (presumably comprising principally his farm land) at a price equalling only its appraised value and with-

out regard to the total encumbrances on the property. This grant had the ultimate net effect of "scaling down" the amount to which the secured creditors were entitled to realize from the farm, and to reduce the "scaled down" liens to an in rem status.[98]

In contrast with the above, Chapter XII of the Bankruptcy Act afforded a multiplicity of solutions for restructuring debts secured by real estate to allow its retention by the debtor.[99] Obviously, by restructuring the obligations secured by a debtor's real estate, the debtor gained more "breathing room" within which these obligations might be satisfied. Under Chapter XII certain principles emerged regarding the permissible metes and bounds within which the debts encumbering real estate projects might be restructured and reorganized.

(1) The terms of the mortgage debt could be extended.[100]

(2) The interest rate of a mortgage debt could be adjusted to current market rates.[101]

(3) Payments required for the mortgaged debt of either principal or interest could be deferred and postponed.[102]

(4) Deferred or reduced payment of principal or interest could be added to the mortgage balance.[103]

(5) However, if there was equity in the property above the mortgage debt, there could be no reduction in the principal of the mortgage.[104]

(6) Also, the secured creditor was entitled to adequate protection of his collateral but only to the extent and value of (or equity in) his collateral.[105]

(7) Also, if a creditor was partially (inadequately) secured, he was entitled only to protection for the value of (or equity in) his security and could have the deficiency in his secured claim satisfied in a manner similar to that provided for unsecured creditors.[106]

(8) Further, if a creditor was inadequately secured, the deficiency of his claim, as against his collateral, could be extinguished under the plan.[107]

(9) More importantly, if there was no value (or equity) in the real estate securing the claim of a mortgage holder, his claim could be relegated to the status of an unsecured claim, dealt with as such, and erased as an inscription in the mortgage records.[108]

(10) Unsecured creditors in Chapter XII proceedings were only entitled to receive what would be available in the event of a bankruptcy liquidation and to receive adequate protection for this liquidation value.[109]

(11) In regard to disposition of assets in the Chapter XII proceeding, a purchaser or the debtor was required only to pay the appraised value of the assets to those holding mortgages on it, in the event the asset was sold or retained by the debtor.[110]

(12) Further, if an item of collateral was abandoned, the debt that it secured was imputed to the appraised value of the abandoned collateral and thereby satisfied in an amount equal to the value of the abandoned collateral.[111]

As explained above, in Chapter XII proceedings restructurings of mortgaged debts aided in the rehabilitation of debtors and their real estate projects, so that they could realize the greatest possible value from their assets, and especially their real property. The means for achieving this benefit, in addition to the restructuring of the debts secured by real estate, were usually derived from, or enhanced by, a number of financial decisions or transactions concerning the retention or disposition of the property, including:

(1) The debtor could sell his assets as a "going concern" or in an "orderly liquidation" so as to achieve the greatest price.[112]

(2) The debtor might be able to "syndicate" his assets, which envisioned the procuring of funds and capital from a syndicate of investors who might receive economic or tax benefits from the assets that were the subject of the "syndication."[113]

(3) The debtor could merge his assets or business with more successful related entities to enhance the resuscitation of his finances.[114]

(4) The debtor could choose to retain his assets and use the assets to produce future earnings. Through the Chapter XII plan, he could then attempt to achieve either a settlement of his debts in an amount less than their face value (commonly known as a "composition"), extend the period of time for the repayment of his debts from future earnings (commonly known as an "extension"), or request both a composition of his debts and an extention of the time within which to repay them from future earnings.[115]

(5) The debtor could propose that his creditors exchange their claims for stock, property, or partnership interests in his assets in satisfaction of the claims against the assets. Court approval had the result of allowing the creditors to exchange their debt position for an equity, investment, or partnership position.[116]

(6) In addition, the debtor could choose to abandon unprofitable or unproductive assets, thereby extinguishing that portion of liabilities secured by any encumbrances on the abandoned assets, and the debtor could retain his more productive and profitable assets so as to produce future earnings to pay creditors and reform his finances.[117]

F. Cases Under Chapter XII

The only significant farmer case which this writer could find reported under the old Bankruptcy Act, after the expiration of section 75, was In re Benson.[118] In Benson, the debtor owned a farm which was valued in excess of the one mortgage debt against it, owed to a bank, in the amount of $179,093.28. The debtor owed $529,299.39 in debts secured by other (personal) property and $168,047.05 in unsecured debts. In addition to farming, the debtor also operated a retail store. The debtor's plan was not clear as to its treatment of chattel mortgage holders and unsecured creditors, but since the opinion stated that these classes of creditors accepted the plan, the treatment of these claims is not important for purpose of this analysis. What is important was the restructuring of the claim owed to a sole creditor secured by the debtor's farm.

At filing, the mortgage loan was fully due and payable in its entire amount. The debtor's plan provided that this creditor's claim, to the extent fixed and allowed, would be paid in full over 20 years, with interest thereon at an adjusted rate. An initial installment would be paid one year after confirmation of the plan, and the balance due on the claim would be deferred and paid in 19 consecutive equal annual installments. The plan would be funded by income from both the debtor's retail store and farm operations.

The secured creditor strenuously objected to the restructuring of its mortgage debt, arguing that it did not make long-term real estate mortgage loans and that, if it were to make such a loan, it would charge a higher interest rate (i.e., 15%) than the interest rate to be provided under the amended plan (i.e., 11%). However, the court rejected these arguments and exercised its "cram down" power because it determined that the creditor, although not consenting to the plan, was (1) receiving adequate protection for the realization of the value of its debt as called for under section 461(11) of Chapter XII,[119] (2) receiving completely (although not immediately) compensatory treatment as envisioned by In re Murel Holding Corp.,[120] and (3) receiving "fair and equitable" treatment of its claim under generally accepted principles of reorganization law. The court rejected the secured creditor's argument that adequate protection, a cram down requirement under Chapter XII of the old Act,[121] was not being provided under the plan. The court required that, for confirmation, the plan be amended to adjust the prefiling interest rate (9%) to the bank's cost of money (assumed by the court to be 11%), but otherwise found that the bank was adequately secured and properly dealt with (i.e., repaid and protected during the repayment period) under the plan.

The Benson case is clear authority for the proposition that, under Chapter XII, farmers could file plans embodying extensions of time for the repayment of their farm debt, using reamortizations or deferments of debt as their primary mode of financial restructuring, and have such plans confirmed. In fact, numerous cases were confirmed under Chapter XII whereby secured debt was reamortized and extended in payment; and the primary issues for such plans were whether the restructuring was "fair and equitable," that is, whether the deferred payments adequately protected the secured creditor by giving completely compensatory treatment for the value of the underlying security to the claimant, and whether such plans of extension were feasible so that creditors would receive the treatment promised under the plan.[122]

Further, it is clear that mortgage debts could be scaled down to the value of the underlying collateral and that this "scaled down" mortgage debt could be repaid over an extended period of time. Even though there were no Chapter XII farmer cases achieving this result, such a restructuring was approved in In re KRO Assocs.[123] In the KRO case, the court held that a first mortgage debt secured by real property could be reduced to the value of the realty and that the debtor could pay this reduced debt over a reasonable number of years, if the plan provided a reasonable interest rate for the deferred payments, and if the debtor provided evidence of (or guaranteed providing) the willingness to fulfill the repayment schedule proposed under the plan.[124] Various decisions held that mortgage debts could be reduced to the value of the underlying collateral and repaid as restructured by the Chapter XII plan.[125]

Chapter XII, under the evolving trend of cases, could have provided farmers with substantial relief from their problems, since it did allow a "scale down" of mortgage debts and an extended time over which to repay the reduced debts (assuming the feasibility of a plan could be demonstrated). In fact, under the evolving jurisprudence, as illustrated by the Benson and KRO decisions, farmers may have received as much, or more, relief under Chapter XII than under section 75. However, the enactment of the new Bankruptcy Code (and corresponding repeal of Chapter XII) substantially precluded any real relief to farmers via reorganizations. Under the new reorganization concepts of the Bankruptcy Code, this writer has found it very difficult to obtain

confirmation of a plan of reorganization for farmers providing any meaningful relief from the top-heavy debt which many farmers face today. Legislation enacted in recent years has liberalized the farmer's ability to borrow under government programs and thereby encouraged the farmer to become over-leveraged. These policies now clash with the provisions of the Bankruptcy Code inhibiting a "scale down" of mortgage debts and a discharge of excessive unsecured liabilities.

G. Farmer/Debtor Relief Available Under The New Bankruptcy Code

The means for achieving rehabilitation under Chapter XII was both the ability to restructure mortgage encumbering a debtor's assets and the subsequent leeway to make appropriate decisions concerning their retention of disposition. These dual decisions were the principal modus operandi for achieving rehabilitation. These vehicles have been substantially carried forward and reenacted in the new Bankruptcy Code. The new Code has consolidated the provisions for reorganization formerly contained in Chapters X, XI, and XII of the old Act into one new chapter, which is Chapter 11 of the new Code.[126] The substantive law of these chapters under the old Act has been, to a large extent, integrated into Chapter 11 of the new Code.[127] It is submitted that the principal limitations in the rehabilitation, reorganization, restructuring, and "cram down" process for farmers under the new Code, as compared to Chapter XII and section 75 of the old Act, are as follows:

(1) A secured creditor may elect under section 1111(b)[128] of the new Code to have his claim allowed at its face amount and not scaled down (reduced) to the value of the security with a deficiency claim treated as an unsecured debt.[129]

(2) Similarly, under section 1111(b) of the new Code, a secured creditor cannot be forced against his will to receive shortly after confirmation only the value of his collateral; rather, he may elect to have his claim treated as though he had recourse against the debtor for the entirety of his claim (and thereby not be relegated entirely to his collateral and the value thereof).[130]

(3) Likewise, under section 1111(b) of the new Code, a secured creditor may elect to retain his lien against the collateral for the face amount of his debt and not have his lien fully or partially eradicated, even if there is marginal equity in his collateral.[131]

(4) But even if the secured creditor elects under section 1111(b) to retain his full lien, the debtor is required only to make future payments equal to the value of the collateral, rather than the face amount of the mortgage debt.[132] It is submitted that section 1111(b) primarily inhibits farmer relief where the farmer-debtor desires to sell or refinance his mortgaged farm land shortly after confirmation, since the election under section 1111(b) primarily precludes the secured creditor's having his lien "scaled down" to the appraised value of his collateral at confirmation and then being "cashed out" shortly thereafter through a sale or refinancing by the debtor.[133] Conversely, if the farmer desires to keep his land, not refinance it, pay the lienor(s) from an income stream provided by future earnings, and have the payments geared to the appraised value of the farm (rather than the mortgage debts encumbering it), this writer suggests that this result is expressly permitted under section 1129(b)(2)(A) of the Code. Thus, the new Code has the practical result, if not the intent, of "scaling down" secured claims (but not the liens securing them) because the income stream needed to satisfy the secured debt(s) need have only a "current value equal to the value of the collateral" [134] and not the amount or value of the debt(s).

(5) The new Bankruptcy Code precludes a debtor from obtaining a discharge of excessive liabilities without the creditors consent, because the "cram down" standards in Chapter 11 reorganizations incorporate the rule of absolute priority.[135] Therefore, any dissenting impaired class of creditors is entitled to full compensation before any junior ownership interests may retain anything of value (e.g., continued ownership of stock or property of the debtor),[136] unless the holders of the valueless ownership interests contribute new capital necessary for ongoing business operations or funding of the plan (in which case the holders of ownership interests may be allowed to retain their financial stake in the reorganized business entity).[137]

This rule (of absolute priority) causes substantial difficulties for overleveraged farmers to gain rehabilitation under Chapter 11 of the Code, since it is very difficult to negotiate and confirm plans of reorganization requesting or requiring creditors to take less than full payment. Assuming the debtor can confirm a plan over the dissent of an impaired class of creditors in order to keep his farm, he must still, in cramming down on this class, pay it in full. This creates many situations where farmers come out of reorganization highly leveraged (after going into the reorganization case with too much debt), causing them to fail to consummate and fully complete their plans, because they cannot force a composition (and corresponding discharge of excess debts) on creditors via a cram down under Chapter 11 of the Code. Therefore, the rule of absolute priority, applied in farmer reorganization cases under Chapter 11, often perpetuates the initial problem, that is, heavy indebtedness that cannot be repaid because of the diminished sales prices for crops created by overproduction. Further, farmer plans which are required by the rule of absolute priority to repay substantial debts under any fixed repayment schedule will always be subject to the issue of whether they are feasible, that is, whether the debtor will be able to meet these fixed repayment schedules in the future, especially in the face of the fluctuations in the farm economy and the possibility of crop loss due to natural forces beyond the debtor's control (e.g., inclement weather, insect infestation, etc.).[138]

Therefore, the present provisions of Chapter 11 are inadequate for the rehabilitation of financially distressed farmers who have excessive liabilities, since it is virtually impossible to confirm a plan of discharging the excess debts (which is the primary relief needed by such farmers) unless all impaired classes of creditors consent to the composition offered (which is an improbable result in most cases).

In conclusion, and in contrast to section 75 and Chapter XII of the old Act, the new Code precludes (a) the "scaling down" of the face amount of mortgage debts to the value of the underlying collateral, (b) the "cashing out" of the "scaled down" debt by the debtor shortly after confirmation, if the creditor opts for special treatment, and (c) the ability of the debtor to keep ownership of his property unless all creditors are paid in full (including interest).[139] Under section 75 the express purposes of the statute were to "scale down" the mortgaged debt(s) on farms to the fair market value of the farm, as fixed by appraisal, and to allow the farmer to have a three-year period of time within which to redeem his property from the bankruptcy court and "cash out" his mortgage creditors for the appraised value.[140] This right of redemption for less than the amount of the mortgaged debt was (and still is) an important right where the value of farm land is decreasing due to economic forces beyond the farmer's control; but the new Code appears to permit this result only by allowing the debtor's future payments to be made over an extended period and to be geared to the value of the farm and only if all creditors are fully paid (or vote by appropriate majorities to accept less than payment in full of their claims).

Similarly, under Chapter XII of the old Act, it seems clear that the debtor had the right to retain and buy back his property from the court and crditors for its appraised value, with the unsecured (undersecured) portion of the debt treated as unsecured debt or extinguished (in the event the obligation was in rem to the property).[141] Therefore, the farmer-debtor had the clear right to relieve himself of oppressive and cumbersome mortgage debts under the format of redeeming his property at its fair market value. Further, it was equally clear that under Chapter XII the farmer-debtor could restructure immediate pressing obligations over a twenty-year period, thereby gaining a significant extension of time within which to pay the debts against his farm.[142] Under the old Act bankruptcy courts had the authority to require mortgage holders to accept the payment of this reduced debt from the farmer over a reasonable period of time.[143] Under section 75 the farmer was given three years within which to redeem his property, and although there are few specific cases so holding, it is submitted that under the "cram-down" powers of Chapter XII, a bankruptcy court could have required an even longer period of time for the debtor to redeem his farm at the reduced appraised amount under appropriate factual circumstances.[144] Because of (a) the limitations created under section 1111(b) inhibiting the right of the debtor to "scale down" and reduce mortgage debts, and (b) the rule of absolute priority (requiring dissenting impaired classes of claims to be fully paid under any "cram down" allowing the farmer to retain his farm), a farmer is accorded limited flexibility to restructure his mortgage debts under Chapter 11 of the new Bankruptcy Code and thereby retain his farm land and pay his creditors from the future earnings derived from the crop reduction of his farm.

H. Cases Under the New Bankruptcy Code

Extensions and Moratoria. Some principles for rehabilitation existing under Chapter XII of the old Act were carried over and reenacted in Chapter 11 of the new Code. One of the most significant principles carried forward is derived from the farmer rehabilitation case under the old Act, In re Benson,[145] discussed earlier,[145a] and it is still good precedent for farmer reorganization cases under the new Code. Benson held that a debtor's plan which provided that the primary secured creditor's claim would be paid in full over twenty years, with interest thereon at prevailing rates, could be confirmed.

This case established the proposition that a farmer should have the right to retain his land, restructure his mortgage debts over a reasonable time, and pay the mortgage

debts out of future earnings. This philosophy has been reenacted in section 1129(b)(2)(A) of the new Bankruptcy Code, which gives the court the power to confirm a plan of reorganization over an objecting secured creditor's dissent, where the objecting creditor will be paid in full, together with an appropriate interest rate, under the reorganization plan.[146] This proposition is expressly supported by the case of In re Hollanger,[147] where a bankruptcy court exercised its "cram down" powers under the new Bankruptcy Code to allow two farmer-debtors to restructure various mortgage debts secured by farm land over the dissents of various mortgage creditors.

In the Hollanger case, a farmer and his wholly-owned farming corporation, engaged in consolidated farm operations, filed for reorganizations. The court found that the value of the farms in question greatly exceeded the amount of the debts secured by the land. Further, the court found that the debtors' plan were feasible, since there was presented a seven-year analysis, including a budget and income projection, for the debtors' farming operations, all of which illustrated the debtors' ability to cultivate their farm land and satisfy their obligations. Therefore, the court confirmed the corresponding, compatible plans, both of which provided that the debtors would retain farm land and repay their debts from future earnings.

The most significant restructuring of the mortgage debt through the plans was to provide that all mortgage payments due and owing at both filing and confirmation would be deferred and extended for seven years, at which time they would "balloon" and become fully due and payable. Further, the plan provided that normal annual installments owed on mortgage debts secured by the farm, with the exception of arrearages, would be reduced by approximately 15%, with the new payments to be made in the mid-spring of each subsequent year. This allowed the long-term mortgage debts on the farm land to be paid at a slightly reduced amortization, except for arrearages. Since a plan was confirmed in the middle of a crop season, the debtors were allowed to continue to cultivate and harvest their crops in order to produce sufficient monies to meet their new installments. Thus, the debtors gained an eighteen-month moratorium after filing. In addition, the plans provided that any debts bearing installment repayment schedules of less than seven years would be restructured to be paid in equal annual installments over seven years. Therefore, the essence of the plans was (a) to allow the debtors a seven-year period of rehabilitation, (b) to relieve them from immediately pressing arrearages, and (c) to defer the due dates of various obligations which they owed as part of the rehabilitation program.

Following the logic of In re Benson,[148] the court held that the Hollanger plan provided creditors the indubitable equivalent of their claims within the meaning of In re Murel Holding Corporation.[149] Hence, the court found that the plans provided completely (yet not immediately) compensatory treatment for all creditors, coupled with adequate protection for their claims, which allowed the confirmation of the debtors' plans over the objections of various secured claimants.[150]

An unreported case furnished another illustration of the possible rehabilitation results under the new Bankruptcy Code. The case of In re Upshaw[151] held that, if a farmer is unable to retain his land and use the earnings derived from it to pay creditors in the future, the court can allow the debtor to restructure the obligations secured by the farm in the manner most likely to produce the greatest sale price. The debtor's plan in Upshaw provided a format similar to that in Hollanger. The major asset was a farm, embracing approximately 217 acres, valued at approximately $45,000, which secured a first mortgaged debt to a life insurance company in the approximate amount of $225,000 and a second mortgage debt in favor of the Farmer's Home Administration (FmHA) in the approximate of $155,000, which totalled approximately $338,000. The court found that the value of the farm exceeded the amount of these debts and furnished an "equity cushion" for the satisfaction of these claims. The plan provided that the present annual payments and arrearages on these two secured claims would be deferred and "balloon" approximately three years after confirmation. The deferring of arrearages was similar to the restructuring provided under the Hollanger case.[152] The plan was one of orderly liquidation and provided that the two secured claims would be reduced to in rem basis and the property would be sold subject to these two secured claims, as restructured.[153] Under this liquidation plan, a new purchaser could buy the property subject to the in rem indebtedness and have approximately one year berfore being required to make mortgage payments. Therefore, the restructuring of the debt would allow the purchaser to have some "breathing room" within which to make annual payments after purchase, and the purchaser would not have to assume and become personally liable for the underlying mortgage debts. These two favorable factors were found to enhance the debtor's ability to receive the highest possible price for his farm land thereby receiving the greatest possible recovery of equity in the land for himself and his creditors.

The unreported Upshaw case was followed in a reported case, *In re Iverson*,[154] which embodied some of the same restructuring concepts as were found in *Upshaw*. In Iverson, one of the restructurings provided under the plan was that the mortgage debts against the farms was reduced to an in rem status, arrearages were deferred five years, and the underlying principal owed on the farm debt was reamortized over twenty years, similar to the Benson plan. This restructuring format also enhanced the debtor's ability to retain or sell the farm.

The precept that farmers should be granted extensions and moratoria as a form of relief from debt has existed under the rehabilitative provisions of section 75, Chapter XII, and Chapter 11; and it should be continued under any new family farmer reorganization act.

Exchanges of Liens and Marshaling of Assets. Another unreported case furnishes an illustration of the restructuring on the farm land to enhance the farmer's ability to continue farming operations, refinance this land, or sell his farm. In the case of In re Adcock,[155] a father and two sons owned approximately 718 acres of farm land valued at approximately $1,250,000. The debtors had engaged in farming operations for several years. Because of continued losses and borrowings to meet working capital needs, the debtors had placed the following liens upon their property and farming equipment:

1. First Mortgage (insurance company)	$419,000
2. Second Mortgage (FmHA)	480,000
3. Third Mortgage (local bank)	140,000
4. Fourth Mortgage (FmHA)	280,000
Total	1,319,000

The total debt encumbering the land was approximately $1,319,000. The debts of the local bank and the FmHA were also secured in various banks and priorities against farm equipment. Finally, the bank held mortgages on personal collateral belonging to the debtors.

The farmer-debtors' particular problem in this case was that they had more than enough collateral to secure their creditors, but the collateral was intermingled and interwoven between junior and senior liens in favor of the bank and the FmHA to such a degree that it was difficult to determine what collateral position was enjoyed by each secured lender. The FmHA was reluctant to agree or consent to any restructuring of its obligations.

The plan of reorganization proposed a substitution and exchange of the collateral held by the FmHA secured by equipment (which lien was valued at approximately $50,000) for the collateral of the bank which was secured by its third lien position (and in front of the FmHA's fourth lien position) on the farm, which lien was valued at approximately $140,000. The debtor's plan essentially proposed to erase the FmHA's lien on its movable collateral and to erase the bank's lien on the farm land. Thus, the plan proposed to relegate the farm to the FmHA for satisfaction of its entire lien, since its enhanced collateral position of approximately $140,000 against the farm exceeded the collateral position of approximately $50,000 given up against the farm equipment. Conversely, the plan sought to move the lien of the bank from the farm so that it would be secured only by farm equipment and other personal property of the debtors. The bank finally consented to the plan, but the FmHA voiced objection.

The court confirmed the plan based on the following logic. First, sections 361 and 1129(b)(2)(A)[156] envision that a secured creditor should have its collateral position protected throughout the proceeding for the value of the collateral; so long as this protection was provided, together with completely compensatory satisfaction of the secured creditor's claim, the creditor was being statutorily protected. It had no constitutional right to more than it was receiving.[156a] Under the Adcock plan, the FmHA was beign adequately protected in the exchange of collateral position with the bank.

Second, the quality of the collateral given to the FmHA under the plan was superior to that which it was forced to release. Its lien position against the farm was increased by the deletion of the third mortgage in favor of the bank, which was superior to the FmHA's fourth mortgage position, and the FmHA was releasing its lien on equipment. The court found that the equipment was subject to deterioration and depreciation, whereas the farm would probably appreciate in value. Thus, both the quality of the new lien position on the farm given to the FmHA under the plan as well as the quantity (i.e., the value of collateral given up versus value of collateral received) were enhanced.

Third, the plan achieved a reasonable compromise which would prevent expensive and time-consuming litigation between the bank and the FmHA regarding their respective ranks and lien positions on the various

items of chattels. This compromise fostered confirmation of a plan providing rehabilitation for the debtor and more complete recovery for all creditors.

Fourth and finally, the compromise allowed the debtors to have certain collateral released to them to be liquidated. The proceeds from the liquidation furnished them with working capital needed for future farming operations.

The unreported Adcock case was followed by the reported Iverson case,[157] which embodied a similar exchange of liens and marshalling theory as Adcock. In Iverson, there was also an exchange of competing liens. On one farm, the Morehouse farm, an insurance company held a first mortgage, the FmHA held a second mortgage and a fourth mortgage, and a local bank held an intervening third mortgage. On a second farm, the Ouachita farm, an insurance company held a first mortgage, the local bank held the second mortgage, and the FmHA held the third mortgage. The plan provided that the local bank would cancel its third mortgage against the Morehouse farm and that the FmHA would cancel its third mortgage against the Ouachita farm. This had the effect of simplifying the debt structures on both farms and breaking any "cross-collateralization" problems with respect to each farm. Although both the local bank and the FmHA held multiple liens against various items of collateral, the liens were only securing one primary obligation to each creditor. Therefore, the erasure of competing liens did not really diminish the claim of either the bank or the FmHA, but rather relegated the bank to the Ouachita farm for its primary source of collateral and relegated the FmHA to the Morehouse farm as its primary source of collateral. By this process, the FmHA had a clear second mortgage on the Morehouse farm, and the local bank had a clear second mortgage on the Ouachita farm. The simplification of this debt structure enhanced the potential of the debtor to sell the property and clarified the competing mortgage positions among the secured claimants, thereby simplifying their recovery position without diminishing any real equity in their collateral for their recovery.

This form of restructure should be made available to farmers under the provisions of any family farmer reorganization act.

Transfers of Property to Satisfy Claims. One alternative which farmers have to satisfy creditors under a plan is the transfer of property in satisfaction of claims. For example, in the case of In re Weiberg,[158] the debtor's plan attempted to satisfy his major secured creditor by transferring three farms and $10,000.00 cash in satisfaction of a secured claim of $2,782,175.16. As a result of the transfers of land and property, the debtors would retain a 640 acre farm free and clear of the lien against it held by the major secured creditor. The debtor argued that the land and money had a value of $3,714,678.00, which was substantially in excess of the secured claim, but the creditor argued that the value of the property was $2,358,000.00, which was substantially less than the claim. The court found the value of all the property and money proposed to be transferred by the debtor to be $2,477,902.34, which was approximately $304,273.00 less than the value of the secured claim.

Therefore, the court found that the secured creditor was not receiving full value under the plan and that the undersecured (deficiency) claim which it would hold after receiving the property transfer would not be paid under the plan; and hence, the court concluded that the plan could not be confirmed because it unfairly discriminated against this creditor.[159] Since all other unsecured/undersecured creditors were being fully satisfied, the court deemed the failure to satisfy the entirety of the objecting creditor's claim constituted an improper form of discrimination, thereby forcing the court to deny confirmation of the plan.

If sufficient values had been found by the court, it appears that confirmation of the plan would have been clearly proper. The Court of Appeals for the Fifth Circuit has recently held that a plan providing (a) a transfer of property to an oversecured claimant (which property was a portion of the creditor's collateral package) in full satisfaction of his claim and (b) that the debtor could retain a portion (the excess part) of the collateral free and clear of the prefiling lien could be confirmed over the creditor's objection.[160] However, the property values in *Wieberg* were simply insufficient to satisfy the secured claim.

In conclusion, the transfer of property (i.e., by abandonment of collateral) to satisfy claims should be reenacted as part of the provisions of any family farmer reorganization act.

Scaling Down Secured Claims to the Value of the Collateral. The ability to reduce secured claims to the value of their collateral under a plan has been substantially eroded by the enactment of section 1111(b) as part of our new reorganization concepts in Chapter 11.[161] Most of the decisions reported under section 1111(b) seem to have involved farmers and have impaired their ability to gain financial rehabilitation. For example, in one case, *In re Griffiths*,[162] a bankruptcy court denied confirmation of a farmer's Chapter 11 plan proposing (a) a return of a portion of an undersecured bank creditor's collateral and (b) a payment to the bank of a lump sum equal to the value of the remaining collateral. The bank made an election under section 1111(b)(2), and the court held that the plan sought an improper "cash out" of a portion of the undersecured claim and that the election made by the bank prevented this result.

In essence, the plan provided that the debtors would return part of the bank's collateral and pay a "lump sum equal to the value of the remaining collateral in total satisfaction of [the bank's] . . . claim."[163] The thrust of section 1111(b) is to prevent a debtor from appraising a secured creditors collateral and "cashing out" the secured claim by the payment of cash after confirmation of a plan, and section 1111(b) gives the secured creditor the right to elect to maintain the full amount of its lien against the collateral after confirmation.[164] Therefore, applying these rules to the farmer's plan in *Griffiths*, the court felt compelled to deny confirmation, because part of the treatment of the bank's secured claim included a prohibited "cash out" of a portion of its collateral.

Similarly, in the case of *In re Hallum*,[165] a plan of reorganization was denied confirmation because of section 1111(b). In *Hallum*, the debtors were in the plant nursery business and owed the FmHA (Farmer's Home Administration) the sum of $3,000,000.00. The FmHA claim was secured by liens on most of the debtor's property. The plan provided that the FmHA would be paid the value of its collateral, which was the sum of $1,400,000.00. This would create and unsecured claim for the FmHA of $1,600,000.00. Since unsecured creditors would not receive full satisfaction, the FmHA made an election under section 1111(b) to maintain its entire lien against the collateral and have no unsecured claim. The plan is unclear as to whether the $1,400,000.00 would be paid in cash after confirmation or deferred payments in the future equal to $1,400,000.00. If the $1,400,000.00 was not one lump sum (i.e., a prohibited "cash out"), but rather a total of deferred payments made after confirmation, the plan could have been confirmed.[166] Since the decision does not discuss this issue, it is possible to determine whether it was correctly decided, but it is illustrative of the difficulty for a farmer to scale down secured debt to the value of collateral and pay the reduced debt under a plan in face of a section 1111(b) election.

It is arguable that, notwithstanding the problems illustrated in the *Griffiths* and *Hallum* cases to confirmation of plans by farmers, they properly interpreted the interplay between sections 506(a), 1111(b), and 1129(b). However, the subsequent decision of *In re Elijah*,[167] clearly misapplied section 1111(b). As in *Griffiths*, the debtor's plan provided for a return of certain collateral to several secured creditors, but importantly, the creditors in *Elijah* were oversecured. The court held that this surrender and transfer of property in kind could not be crammed down on the creditors over their objections.

Elijah failed to recognize that, under the cram down provisions of section 1129(b), "abandonment of the collateral to the creditor would clearly satisfy the indubitable equivalence" necessary to satisfy a dissenting secured class and thereby gain confirmation.[168] In *Elijah*, fully secured creditors were being given a portion of their collateral in full satisfaction of their claims, with the debtor retaining a part of the collateral. The transfer of property (collateral) to satisfy secured claims has recently been held to be a permissible means of satisfying oversecured creditors through a reorganization plan.[169] This rule should not prevent the abandonment or transfer of collateral to a creditor to satisfy his claim. In such situations, there is no prohibited "cash out." Moreover, where the creditor is oversecured, there is no need for the protection afforded by such under section 1111(b). Finally, in view of the legislative history quoted in the text above, section 1111(b) should not preclude abandonment or transfer of property or collateral to a secured creditor in lieu of the payment of cash as part of the consideration given to satisfy the creditor. However, in *Elijah*, the Court lost sight of these points.

Section 1111(b) has thus been misinterpreted, and in some cases misapplied, to inhibit rehabilitations of farmers. This concept should be deleted from any family farmer reorganization act.

I. Suggestions for Legislative Changes

There are several practical suggestions for legislative changes to aid in a farmer's rehabilitation based upon problems presently existing in the application of Chapter 11 reorganization provisions to farmer problems. First, the continued use of the proceeds from a farmer's crop may form the nucleus to finance future farming operations. Parenthetically, if farmers are going to plant and cultivate their crops in the spring and summer of a year, they will first obtain a loan from an agricultural lender secured by the crop to be grown and its proceeds. The proceeds of this loan (commonly known as a "crop loan") will provide the monies re-

quired for financing the planting, cultivation, and harvesting of a crop. After the harvesting, the crop loan may be repaid from the proceeds derived from its sale.

In many instances, a farmer will file for reorganization in the middle of a crop year (i.e., prior to the harvest and sale of crops). If this occurs, there may be no prospect for future financing of the planting, cultivation, and harvesting of crops due to the lack of a new crop loan or of continued funding under an existing crop loan. The reorganization will have a "chilling effect" on any lender's willingness to advance monies to produce crops. The only available "financing" for a crop loan may be for the farmer to retain the proceeds derived from his present or past crops after they are sold and to use these proceeds to finance future farming operations. The necessary result is to withhold payments of the proceeds to existing crop lenders. Thus, the crop lender will be forced to retain a "revolving" ("roll over") lien on any crops produced in future years until paid in full.

Adequate provision can be made to protect the crop lender by placing the proceeds derived from the crop in some form of supervised account and ensuring that the use of the proceeds from the account will be directly applied to the production of crops in future years. Therefore, the "adequate protection" mandated by section 361 for the existing crop lender will be the continued tracing of a crop lien to the proceeds, product, offspring, profits, etc., of the present collateral (crop).[170] The proceeds derived from the crop will be, in effect, old collateral in a new form. The plan can provide that the secured crop lender will be able to follow his collateral proceeds indefinitely from liquid funds, to a tangible crop, to the harvested crop, to the proceeds derived from the crop, and so on.[171]

One key to farmer rehabilitations may be to require a present crop lenders to allow the farmer to use proceeds of a crop sale to produce crops in future years and so long as the lender can trace the collateral through various forms of crops and proceeds until the creditor is fully paid. Additional or replacement security (other than the old or new crop) may also be required under section 361 to provide adequate protection.[172]

This issue has spurred substantial litigation under Chapter 11 of the new Code. For example in the case of *In re Nikolaisen*,[173] the debtors proposed to sell grain stored on their farm which was derived from their 1983 crops, to use the proceeds to fund the planning of the 1984 crops and to grant a first lien upon 1984 crops to the secured creditor which held a lien on the stored grain. Further, in the event of crop failure, the debtors would receive a guaranteed minimum payment under their federal crop insurance, and the secured creditor would receive an assignment of these federal crop insurance proceeds. Thus, the debtors would sell the 1983 crops, use the cash collateral, and convert it into new property in the form of 1984 crops. This would effect a "roll over" of the cash collateral (and lien thereon) to, in essence, a new crop loan with the secured creditor retaining a security interest therein. Rejecting the arguments that the secured creditor (the Commodity Credit Corporation, a governmental agency) was not in the lending business (and thus should not be forced to relend under this "roll over" format) and that the offer of protection was not adequate, the court found that the use of cash collateral was necessary to the farmers to continue their efforts in reorganizing their farm operation and that the debtors would be unable to obtain financing of their spring farming operations from any other source than the proposed cash collateral; thus, the court granted the debtor the "roll over" relief requested.[174]

In another case, *In re Sheehan*,[175] the debtors filed a motion for an expedited hearing (on 72 hours' notice) to use cash collateral comprised of the prior years' (1983) crop and its proceeds for their upcoming (1984) farming and ranching operations. The objecting secured creditors argued that they were not being offered adequate protection, viz: that the expectancy of the 1984 crop was not the equivalent of their lien on the 1983 crop (which could be readily sold and reduced to cash), that the lien on the 1984 crop would not provide an adequate "replacement lien," [176] that the debtor's proposal was nothing more than an involuntary unsecured (undersecured?) loan which was not permitted under the Bankruptcy Code, and that there was jeopardy to them because of inadequate budget projections, inadequate farm machinery, and other similar inadequacies bearing upon the feasibility of the debtors' proposal. Further, the objecting creditors argued that the emergency nature of the hearing did not give them reasonable opportunity to prepare for the hearing on this issue.

The court rejected these arguments, holdings that the notice and hearing was appropriate based upon the particular circumstances of the case, the needs of the debtor, and the exegencies of this case. Since the ongoing farming operations would serve to maintain the collateral of these creditors, and since the planting of crops and continuation of ongoing operations were needed immediately and would maintain the value of the objecting creditors' collateral, any harm allegedly suffered by the objecting creditors was mitigated. Further, the court found that the production of the 1984 crop was more than a mere "expectancy." In light of these findings, the court granted the debtors' motion.

Similarly, in the case of *In re Berens*,[177] the court granted the debtors' motion to use cash collateral derived from the prior years' (1983) farming and livestock operations to fund their upcoming (1984) farming operations, but limited the use of such cash collateral for farming operations on *rented* land, since this might jeopardize the replacement lien granted under the order to the objecting secured creditors.

On the other hand, the farmer-debtors did not fare so well in the case of *In re Frank*.[178] In *Frank*, the debtors moved to sell their 1982 crops and use the proceeds to fund ongoing (1983) crop and cattle operations. Specifically, the crop (soybean) proceeds would be used to purchase cattle, and the court found that the proposed investment was too speculative for approval. Although not rejecting the concept, the court found that the record was inadequate to carry the debtors' burden of proof that the cattle operation would produce reasonable profits, while not jeopardizing unduly the secured creditors' new replacement liens.

Similar to *Frank*, the district court overturned a bankruptcy court's ruling authorizing the use of cash collateral and replacement through a "roll over" lien in the case of *In re Berg*.[179] The court held in *Berg* that the debtors' offer of a lien in a contemplated crop yet to be grown, plus an assignment of federal crop insurance proceeds, was not adequate protection. Notwithstanding the findings of fact of the lower court, the district court, citing only legislative history [180] as precedent, the court held that the property in which a replacement lien was granted was not the indubitable equivalent of the lien in the stored grain. The court stated that the "debtors have provided a promise of collateral which may exist in the future. This is, in effect, an offer of no collateral at all." [181]

This case held that a "roll over" lien can never be permitted as a matter of law. However, this holding was reversed by the Court of Appeals for the Eighth Circuit in *In re Martin*.[182] The *Martin* case held that the "roll over" (replacement) lien could be granted, citing *In re Sheehan*.[183] However the Court of Appeals held that the bankruptcy court had failed to establish the value of the security interest held by the objecting secured creditors and had also failed to adequately identify the risk to this value associated with the planting and harvesting of a crop not yet in existence. Thus, the appellate court remanded for determination of these issues, stating:

"The concerns we express as not insurmountable. On the contrary, we believe they are in accordance with the policy of balancing the competing interest of a debtor who proposes to use secured property to contribute to the reorganization plan on one hand and the creditor who wishes to obtain the value and safety of its security interest on the other. After considering the value of the secured creditor's interest and the risk associated with the debtor's proposal, the bankruptcy court must ultimately decide whether the debtor's adequate protection proposal provides protection to the creditor consistent with the concept of indubitable equivalence. Indubitable equivalence requires 'such relief as will result in the realization of value." *See In re Sheehan*, 38 B.R. 859, 864 (D.S.D. 1984). If the debtor's proposal provides adequate protection, the request for use of cash collateral should be granted by the bankruptcy court. If the debtor's proposal can be modified to provide for adequate protection while still remaining useful to the debtor, the debtor's request should be granted under the modified plan. If adequate protection cannot be afforded under any circumstances, the debtor's request for use of cash collateral should be denied by then bankruptcy court." [184]

The balancing test of *Martin* does not appear facially improper in its reasoning and is certainly more appropriate in its rationale than *Berg*, but it still presents substantial difficulties for farmer-debtors. Most farmers go into reorganization in the spring of any year. They have just harvested their last years' crop in the fall and winter of the preceding year and often have the harvested crop in storage. Their debts normally come due in the early spring, and they can judge their ability to pay their normal annual obligations which are due against the value of their crop in storage. If the crop is not sufficient to meet normal obligations coming due in the spring, and if a crop loan for the new farming season appears unavailable, their only recourse may be to file for reorganization and use a portion of the cash derived from the stored crops to pay claims against the crops and use a portion to fund the upcoming crop. This places the crop lender holding a security interest in the stored crops to become an involuntary crop lender on the upcoming crop; and the "roll over" lien issue becomes the key factor dictating whether the farmer can continue operations and reorganize. If the "roll over" lien is granted, there is a possibility to reor-

ganize; and if the lien is not granted, the farmer is faced with inevitable liquidation.

The problem here is that these issues occur on emergency bases on many occasions. Both the objecting secured creditor and the debtor are faced with little time to investigate the pertinent facts and prepare for the hearing on whether the "roll over" replacement lien should be granted. From the farmer's viewpoint it is often very difficult to convince a bankruptcy court on short notice and timetables that it is more probable than not that he will be able to furnish the objecting crop lender with adequate protection via the new crop for his prior lien in what is normally cash collateral (the proceeds derived from the sale of the stored crop).

This problem would not be unduly unreasonable, except for a growing trend of cases interpreting the legislative history of the Code to require a more stringent standard of indubitable equivalence than this writer believes is consistent with the spirit of reorganization concepts. For example, the Court of Appeals for the Ninth Circuit has held that an undersecured creditor was entitled to adequate protection for its delay in enforcing its rights against its collateral in *Crocker National Bank* v. *American Mariner Industries* (*In re American Mariner*).[185] From a farmer's perspective, the cyclical and protracted nature of his cash flow makes it difficult, if not impossible, to prevent delay in protecting secured creditors holding liens against farm collateral; and farmers in jurisdictions applying the *American Mariner* rule may find it impossible to reorganize if they must compensate undersecured creditors for their delay in realizing upon their collateral. When the farmer files for relief (normally in the spring of the year), there is no ongoing cash flow from operations until harvest and sale of his crop (normally in the winter of the year), and no adequate protection in form of periodic payments can normally be furnished on a monthly or frequent basis. The farmer can only propose protection in the form of payments annually. Hence, delay in payments to secured creditors is inherent in every farmer reorganization case. Moreover, since most of a farmer's assets are heavily encumbered (because of financial and economic problems discussed previously herein), there is normally little unencumbered property (or encumbered property with equity) which can be offered to a secured creditor as replacement collateral. Thus, if farmers are held to unrealistic (in light of their cash flow) standards of adequate protection under *American Mariner*, it is arguable that they will not be able to provide adequate protection under existing (per *American Mariner*) reorganization concepts; and since the *Martin* case quoted *American Mariner* as providing an appropriate decision in viewing the balancing of debtor relief against the rights of secured creditors for their alleged "bargained for" [186] rights, it may be unduly difficult for farmer-debtors to convince bankruptcy courts that a "roll over" lien is a satisfactory form of replacement lien.[186a]

It is clear to this writer that (a) Congress should consider permitting the granting of "roll over" replacement liens in balancing the policies behind any family farmer-debtor relief statute and (b) *American Mariner* must be rejected as being any persuasive guide in determining whether secured creditors are entitled to adequate protection for their secured claims (or whether they should receive the benefits of any purported "bargained for" rights).[187]

Another practical suggestion for farmer rehabilitations is derived from the premise that, if incumbrances on a farm exceed the farm's fair market value, the farmer should be allowed to redeem and buy back his farm over a reasonable period for the fair market value of the farm, as appraised, when such redemption is feasible. Under the old Act, the cases allowed a farmer-debtor to repay his creditors over a protracted period of time for the full amount of the debt.[187] If the full amount of the debt secured by the farm exceeded its fair market value, the debtor was allowed to have the property appraised to "cash out" the secured creditor under either Chapter XII of the old Act[188] or under section 75.[189] For example, in the case of *In re KRO Associates*,[190] a Chapter XII debtor was allowed to "scale down" the first mortgage indebtedness on an office building to the value of the underlying building, retain the building, and pay off the reduced first mortgage debt over an extended period of years.[191]

In applying these concepts under the new Code, it does appear that debtors are precluded from appraising their farm lands and "cashing out" the underlying mortgage holders through sales or refinancing very shortly after confirmation.[192] The policy of the Code appears to restrict this practice in general in Chapter 11 reorganizations, arguably because it might result in a windfall in favor of the debtor in the event the property values appreciate rapidly after confirmation.[193] This Chapter 11 policy should not apply in family farmer cases.

Conversely, if the farmer-debtor desires to retain his land and repay it over a protracted period of time, however, he need pay only the fair market value of the property as defined under section 506(a) of the Code.[194] The basic premise here is that, regardless of whether a creditor makes an election to be fully secured for the entire amount of his debt pursuant to section 1111(b), he is entitled only to receive future payments having a present value equal to the underlying collateral, rather than the amount of the mortgage debt.[195] In other words, the debtor should not be required to pay more than the fair market value of his collateral (presumably his farm) in order to retain it and give mortgage holders secured by it fair and equitable treatment.

The normal problem with this approach is that the creditor undersecured by a farm will have an unsecured status for the undersecured portion of his claim and may object to a plan allowing a farmer's retention of his farm. For purposes of illustration, the following hypothetical example will suffice.[196]

Assume the debtor owns a farm worth $1,200,000 which is subject to the following encumbrances:

1. First mortgage	$700,000
2. Second mortgage	900,000
3. Third mortgage	210,000
Total	1,810,000

Assume further that the debtor proposes to keep his farm and pay its fair market value ($1,200,000) over ten years, but proposes to pay only a small amount to unsecured creditors (i.e., much less than the full amount of the unsecured claims). Then, assume that each lienor is a separate class of creditors under the plan, that the first lienor accepts the plan, and that the junior two classes vote against the plan. Can the court confirm the plan and allow the farmer to retain it by paying its fair market value?

Properly posed, the question is whether section 1129(b)(2)(B) will operate to preclude a farmer from retaining, redeeming, or purchasing his farm under an ongoing or a liquidating plan or reorganization in the event that undersecured lienors value their collateral, are declared unsecured creditors, and (as unsecured creditors) vote against the plan.[197] A facial reading of the Code indicates that, if an unsecured class of creditors does not vote for the farmer-debtor's plan (which may include the undersecured portion of the second and third mortgages encumbering the debtor's farm under the above hypothetical example), one may argue that he may not be able to "cram down" the plan on any dissenting classes and keep his farm.[197a] The Code provides that all nonconsenting unsecured classes must be fully satisfied (i.e., receive or retain property equal to their claims) before the debtor may receive any benefits.[198] A facial reading of the Code appears to mandate that the holders of claims or interests junior (e.g., the farmer-debtor) to any dissenting class "will not receive or retain on account of such junior claim or interest any property." [199] This is a codification of the rule of absolute priority developed under prior reorganization law, which required that each superior class receive completely compensatory treatment before the next descending class may receive any benefits under a reorganization plan.[200]

Since the second mortgage debt exceeds the value of the farm by $400,000, and since there is no equity or value in the farm for the third mortgage debt, the farmer-debtor will have one secured debt for $700,000 held by the first mortgagee; one partially unsecured debt held by the second mortgagee totalling $900,000 (of which $400,000 is the undersecured portion of the second mortgage debt and of which $500,000 is the fully secured portion of the second mortgage debt);[201] and one completely unsecured (undersecured) debt held by the third mortgagee in the amount of $200,000. Thus, unless the second mortgage holder elects under section 1111(b) to have all of his debt treated as fully secured, the unsecured claims will be $610,000.[202] Therefore, if the farmer-debtor proposes to buy back his farm in the amount of $1,200,000 (which is its appraised fair market value) over a period of time and with an appropriate discount or interest rate, the question is whether such a plan can be confirmed if the undersecured creditors are not paid in full under the proposed plan, vote against such a plan and block the farmer-debtor from repurchasing his farm under an ongoing or a liquidating plan of reorganization.

There is an absence of commentary arguing that this may be an appropriate result under the new Code, and recent cases under the Bankruptcy Code hold that the farmer cannot keep his farm under these hypothetical facts.[203] However, the traditional right of the farmer to repurchase his farm at fair market value appears to be one which is absolutely necessary for a reorganization of his finances.[204] Furthermore, one might argue that this plan is simply one of liquidation and that the farmer should not be denied his exclusive right to repurchase his own farm land for its fair market value.

Conversely, creditors will argue that, to the extent the debtor is given the exclusive right of redemption or purchase, they are being denied the right to potential full recovery and that the farmer-debtor is obtaining the possibility of a windfall in the event of significant appreciation in the value of

the farm after confirmation. Naturally, the farmer-debtor can reply that any appreciation in value in the future will be more probably caused by his future personal work efforts rather than the economic climate or any intrinsic value in the farm. Furthermore, unless the mortgage holders involved are prepared to farm the property and produce crops, one may argue that the nation's economy may suffer unless the farmer-debtor retains his farm and continues to produce commodities.

It seems clear to this writer that any farmer relief statute will have to omit the rule of absolute priority and allow the farmer-debtor to "scale down" secured debts against his farm and gain a discharge of excessive liabilities, similar to the relief available to farmers under section 75 and Chapter XII of the old Bankruptcy Code.

Moreover, under the present reorganization statute, a plan may not be confirmed unless there is at least one noninsider class accepts a plan, or all classes are unimpaired.[205] The basic framework of reorganizations under Chapter 11 is to encourage consentual, negotiated plan of reorganization.[206] In farmer cases, there are often few unsecured creditors, and much of the farmers debt is often represented by substantial secured claims. Further, in order for farmers to gain any substantial relief, both secured and unsecured claims must be reduced—and excessive unsecured claims must be discharged and excessive secured claims must be "scaled down" to the value of the collateral. It is very unlikely for creditors in farmer plans to consent to such treatment. Thus, the present reorganization policy oriented towards consentual plans flies in the face of the relief needed by most farmers and the practicalities of gaining such relief through a negotiation and voting process (*i.e.*, where substantial favorable votes are a prerequisite to confirmation). The present rule requiring the affirmative vote of at least one impaired class has precluded farmers from gaining plan confirmation under Chapter 11.[207] A practical suggestion would be to delete voting requirements in farmer-debtor cases under the new proposed legislation, creating a Chapter 13 format under which voting is not required.[208] This writer believes that the Chapter 13 approach (no voting and no rule of absolute priority), rather than the Chapter 11 approach, must govern family farmer reorganizations under any new act.

A final suggested consideration concerns the issue of whether creditors should be allowed to file plans in farmer cases. For example, in the case of *In re Jasik*,[209] the Court of Appeals for the Fifth Circuit upheld confirmation of a plan filed by a trustee and creditors' committee seeking to liquidate all the debtor's property. Since a farmer cannot be forced involuntarily into a liquidation proceeding under Chapter 7,[210] or converted without his consent from Chapter 11 to Chapter 7,[210a] the debtor argued that the result of the liquidation plan ran contrary to the legislative policy against farmers being placed involuntarily into liquidation proceedings. The Court of Appeals rejected this argument and upheld the confirmation of the liquidation plan.

The Eighth Circuit followed the Fifth Circuit in the case of *In re Button Hook Cattle Co., Inc.*,[211] holding that a liquidation plan filed by a creditor could be confirmed.[212] However, there is a split of authorities on this issue,[213] with various bankruptcy courts holding that a bankruptcy court may not confirm a liquidation plan over the objection of a farmer-debtor, since a creditor cannot compel a farmer's liquidation under Chapter 7, or a conversion of a farmer-debtor's reorganization case under Chapter 11 to a liquidation case under Chapter 7.[214]

Congress will have to give due consideration to this policy issue of whether creditors may file farmer plans, whether farmers may be liquidated without their consent, or whether farmers should be given the exclusive right to propose reorganization plans. From this writer's perspective, the only plan practically available, if filed by creditors, is one of liquidation. Since the other provisions of the Bankruptcy Code prohibit involuntary liquidations of farmers as a matter of bankruptcy policy, the only consistent position would be to give farmers the *exclusive* right to file a plan. This position would also preclude either involuntary petitions against farmers under any new farmer relief statute or the conversion of a farmer reorganization case to a Chapter 7 liquidation without the farmer's consent.

IV. STATUS OF FARMER RELIEF BILLS AND LEGISLATIVE PROPOSALS

The finances of many farmers are in jeopardy and close to ruination, which has caused Congress to study legislative proposals to amend the Bankruptcy Code. Although these proposals do not, in this writer's opinion, address and resolve the *actual* problems underlying farmer finances, they do seek to alleviate the *result* of the problems (e.g., farm foreclosures) by giving farmers relief from their inability to pay their debts as they mature.

This situation is very similar to that in the Great Depression occurring in the 1930's. In 1933, Congress moved to aid farmers by passing an emergency farm relief bill which amended the old Bankruptcy Act by adding Section 75.[215] In similar fashion, the House of Representatives has already hastily passed bill H.R. 2211 (hereinafter referred to as the "House Bill") to amend the Bankruptcy Code and to provide relief for family farmers. This bill is awaiting the action of the Senate. The Senate is considering several proposals. One bill has been prepared by Bankruptcy Judges Thomas Small and Thomas Moore (hereinafter referred to as the "Small-Moore Bill") and was introduced in the Senate on March 26, 1986, as S. 2249. Further, the National Bankruptcy Conference (hereinafter the "Conference") has drafted a proposed bill (hereinafter referred to as the "Conference Bill").

The House Bill attempts essentially to incorporate family farmers within the provision of Chapter 13 of the Bankruptcy Code,[216] which this writer believes to be an impractical way in which to handle this problem in terms of statutory amendments.[217] In comparison, the Small-Moore Bill creates a separate chapter for farmers. Chapter 12; and adopts many Chapter 11 reorganization concepts. The Conference Bill also creates a separate chapter for farmers, Chapter 12, and is an amalgamation of both Chapter 11 and Chapter 13 concepts (but leaning more towards Chapter 13). However, there are numerous provisions in these bills which are substantially at variance with each other. The following portion of this article will analyze the provisions and underlying policies of each bill and recommend which provision and policies are more appropriate.

FOOTNOTES

[1] Anderson & Rainach, "Farmer Reorganizations Under the New Bankruptcy Code," 28 *Loyola L. Rev.* 439, 439-40 (1982) (this article explores the historical legislative approach to giving reorganization relief to farmers and explains why the existing bankruptcy reorganization provisions of the Bankruptcy Code are presently inadequate to give any real relief to farmers).

[2] The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 [codified as amended at 11 U.S.C.A. §§ 1-151326 (West 1979 & Supp. 1986)], enacted the substantive law of bankruptcy and reorganization in title 11 of the United States Code (hereinafter referred to as the "Code") and repealed the prior Bankruptcy Act of July 1, 1898, ch. 541, 30 Stat. 544 [codified as amended at 11 U.S.C. §§ 1-1255 (1976 & Supp. V. 1981) (repealed 1979), hereinafter cited as the "Act"]. All references to the prior Bankruptcy Act will be to the sections of the Act. Citations of the Code will refer only to the present sections of title 11 of the United States Code, as amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333.

[3] *See* Anderson & Rainach, *supra* note 1.

[4] *Id.*

[5] This writer believes that the financial problems of the farmer are actually related to legislation and economic causes which are beyond the realm of the Bankruptcy Code. This will be discussed more fully in the text following this footnote. However, the reader should be aware of the fact that many economic factors, such as over-production of crops and agricultural legislation promoting such over-production, cause a lack of adequate prices for crops; and these underlying problems have created the farmer crisis. This crisis is enhanced by legislation providing farmers access to borrowings not available to other businessmen, which has encouraged farmers to become over-leveraged. A symptom of this crisis is the failure of the farmer to meet his obligations as they mature, because he cannot get adequate prices for his crops due to overproduction. Because the farmer is encouraged by legislation to borrow money to meet the shortfall in his cash flow created by this over-production, many farmers have become over-leveraged. From this writer's viewpoint, amendments to the Bankruptcy Code can give relief only to the symptoms of the farmer problems, and this action does not rectify the causes underlying farmer financial failures. Until and unless Congress addresses legislation to cure these underlying problems, amendments to the Bankruptcy Code will furnish no real relief to problems inherent in any farming operation.

[6] Most farmers plant their primary crops in the spring, cultivate their crops during the summer, and harvest their crops during the fall and winter (although some farmers are able to engage in double-cropping, that is, to plant and harvest two crops a year), and therefore, the farmer will generate cash earnings only at the end of the crop year (usually winter) when the crops are sold. Most farmers must rely upon borrowings during the year (if necessary) to provide additional monies. For this reason, farmers are often unable to meet obligations coming due, unless the repayment is scheduled on an annual basis at a time after the farmer receives the sales proceeds from his crops.

[7] *See generally* Blum, "The Law and Lanaguage of Corporate Reorganization," 17 *U. Chi. L. Rev.* 565 (1950); J. Anderson, *Chapter 11 Reorganizations*, §§ 1.01-1.10 (1983).

[8] Act of April 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803); Act of August 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843); Act of March 2, 1867, ch. 176, 14 Stat. 517 (repealed 1878).

[9] V Countryman, *Equity Receivership and Bankruptcy Reorganization* 1. This work is not officially published, but is found in the teaching materials of Professor Countryman in his reorganization course at Harvard Law School.

For a historical discussion and perspective of the evolution of reorganization from equity receiverships through the Chandler Act, see 6 W. Collier, *Collier on Bankruptcy* ¶¶ 0.01-.10 (14th ed. 1979). The reader should note that the citation of this treatise is a reference to the fourteenth edition, which discusses bankruptcy law under the old Act; a discussion of the new Bankruptcy Code is contained in the fifteenth edition, first published in 1980, cited *infra* note 194.

[10] *See, e.g., In re* Reiman, 20 F. Cas. 500 (C.C.S.D.N.Y. 1875) (No. 11, 675).

[11] Act of July 1, 1898, ch. 541, 30 Stat. 544, 11 U.S.C. §§ 1-1255 (1976 & Supp. II 1978) (repealed 1979). The old Bankruptcy Act, as amended, will hereafter be referred to as the old Act or the Act,

and all references to the old Act will be to the original sections of that Act.

[12] *Id.* § 12, 30 Stat. at 549-50.

[13] *See* the authorities cited *supra* note 9. Specifically, among other problems, secured creditors could not be bound under a plan confirmed under § 12. See also the discussion and authorities contained *infra* note 30. For the meaning of "composition," *see infra* text accompanying note 115.

[14] *See* the authorities cited *supra* note 9.

[15] Act of March 3, 1933, ch. 204, 47 Stat. 1467.

[16] 10 H. Remington, "A Treatise on the Bankruptcy Law" (1947). Harold Remington authored a comprehensive treatise on bankruptcy until his death, and The Lawyers Co-Operative Publishing Company continued this publication until the old Bankruptcy Act was repealed in 1979. Volume 10 of this treatise contains a comprehensive analysis of § 75 of the old Act.

[17] *Id.* at 5.

[18] Act of March 3, 1933, ch. 204, 47 Stat. 1467.

[19] Act of June 7, 1934, ch. 424, 48 Stat. 911, 912-22.

[20] *See* the authorities cited *supra* 9.

[21] *Id.*

[22] The Chandler Act, ch. 575, 52 Stat. 840 (1938).

[23] *See* 10 H. Remington, *supra* note 16, § 4002.

[24] *Id.* § 4004. Remington points to the report of the House Committee on the Judiciary No. 1127, February 15, 1944, for a historical discussion and commentary on the subject of the temporary nature of § 75. Specifically, it appears that farmers were granted broader discharges than in ordinary bankruptcy proceedings. These broader discharge provisions appeared to make § 75 inconsistent with the permanent provisions of the old Bankruptcy Act, which contained more restrictions of the discharge of debts. *But cf.* the complete discharge of all debts for wage-earners under Chapter 13 of the New Bankruptcy Code. 11 U.S.C. §§ 1328(b) (1986).

[25] 10 H. Remington, *supra* note 16, § 4002. The emergency situation for farmers, created initially by the Great Depression and extended subsequently by World War II, appears to have subsided and ended by 1949.

[26] The Chandler Act, ch. 575, §§ 401-526, 52 Stat. 840, 916-30 (1938).

[27] For a discussion of Chapter XII generally, *see* Anderson & Ziegler, "Real Property Arrangements Under the Old and New Bankruptcy Acts," 25 *Loy. L. Rev.* 713 (1979); W. Norton, "Real Property Arrangements: Chapter XII, Federal Bankruptcy Act" (1977).

[28] *In re* Benson, 9 Bankr. 854 (N.D. Ill. 1981). A second reported decision, *In re* Dick, 296 F. 2d 912 (7th Cir. 1961), was found, but it gives no real insight as to the farmer relief provided.

[29] *See generally* Anderson & Rainach, *supra* note 1; Anderson, *supra* note 7; King, "Chapter 11 of the 1978 Bankruptcy Code," *53 Am. Bankr. L.J.* 107 (1979); Moller, "Chapter 11 of the 1978 Bankruptcy Code, or Whatever Happened to Good Old Chapter XI?" 11 *St. Mary's L.J.* 437 (1979). *See also* the authorities cited at note 126, *infra*. Any meaningful relief that might be provided farmers under Chapter 13 (which is primarily oriented to "wage-earners") is eroded because of the debt limitations and other restrictions imposed. *See generally* Looney, "The Bankruptcy Reform Act of 1978 and the Farmer: A Survey of Applicable Provisions," 25 *S.D.L. Rev.* 509 (1980); Anderson & Rainach, *supra* note 1.

[30] *See generally* 10 H. Remington, *Supra* note 16, §§ 4001-4131; Hanna, "Agriculture and the Bankruptcy Act," 19 *Minn. L. rev.* 1 (1934); Roberts, "Property, Mortgaged Land, and the Frazier-Lemke Act," 13 *N.C.L. Rev.* 291 (1934); Comment, "A Survey of Sections 74 and 75 of the Bankruptcy Act in Actual Operation," 43 *Yale J.J.* 1285 (1934). Prior to enactment of § 75, any meaningful rehabilitory relief for farmers was virtually unavailable under the Bankruptcy Act or any other statutes. *Id.*

[31] 10 H. Remington, *supra* note 16, §§ 4001-4027.

[32] "Forced liquidation of debtors' estates as in ordinary bankruptcy generally causes unnecessary losses." *Id.* §§ 4001-4027.

[33] *See generally id.;* Hanna, *supra* note 30, at 5. As Remington notes, under § 12 of the old Act, power was conferred upon bankruptcy courts to confirm compositions if agreed to by a majority in number and amount of unsecured claims. Confirmation could be ordered without the necessity of ajudicating the debtor a bankrupt. The debtor took back his estate free from old claims and subject only to the new claims which he had agreed to pay. The consideration paid under the debtor's plan was distributed on account of old claims. 10 H. Remington, *supra* note 16, § 4005.

In comparison, § 75 enabled bankruptcy courts to confirm compositions or extensions of a farmer's secured and unsecured debts "if agreed to by a majority in number and amount of secured and unsecured creditors." *Id.* This new feature differed from § 12 by extending the bankruptcy court's power to bind secured debts. Section 75 thus appeared to be constitutional as initially drafted in 1933 and without the initial Frazier-Lemke Act (which will be discussed in detail later herein). *Id.*

[34] *See* 10 H. Remington, *spura* note 16; Hanna, *spura* 30; and Comment, *spura* note 30.

[35] *Id.*

[36] *Id. See infra* note 39 and accompanying text.

[37] Ch. 869, 48 Stat. 1289 (1934).

[38] One commentator argued that, even if the Frazier-Lemke Act was held to be constitutional, it was "unfair, both in its harshness to creditors and in the implicit discrimination between the protection offered to farmers and other individual creditors." Hanna, *supra* note 30, at 32.

[39] One commentator observed that, prior to enactment of the Frazier-Lemke Act, "[s]ection 75 was a hastily concocted statute dragooned into the [Bankruptcy] Act," and that the "section as drafted proved almost wholly worthless." Hanna, *supra* note 30, at 5. Thus, without the marked relief afforded under the Frazier-Lemke Act, § 75 was not very useful or beneficial for farmers. *Id.*

[40] *See generally* the authorities cited *supra* at note 30.

[41] The first option was described by the Supreme Court in Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 592 n.21 (1935), as follows:

"The prescribed payment (interest) for the first year is 1 per cent, on the appraised value. The prescribed payment for the second year is 3½ per cent. thereof (1 per cent. for interest, 2½ per cent. on account of principal). The prescribed payment for the third year is 2½ per cent. of the principal and as interest 1 per cent. on 97½ per cent. of the principal. The prescribed payment for the fourth year is 5 per cent. on account of the principal and as interest, 1 per cent. on 95 per cent. of the principal. The prescribed payment for the fifth year is 5 per cent. on account of principal, and as interest, 1 per cent. on 90 per cent. of the principal. The prescribed payment at the end of the sixth year if 85 per cent. of the prinicpal, and as interest 1 per cent. of 85 per cent. of the principal. The present value calculated on a 6 per cent. basis, of all deferred payments (principal and interest) would be only 76.6 per cent. of the appraised value. In other words, the agreement to sell if assented to by the mortgagee would require him to relinquish his security not for its appraised value in cash, but for deferred payments which, if met, would yield (on a 6 per cent. basis) only 76.6 per cent. of the appraised value."

[42] *Id.* at 592-93.

[43] *Id.* at 594.

[44] *See* Roberts, *supra* note 30, at 291-92; Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, (1935).

[45] *See* Roberts, *supra* note 30, at 292; Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 586-91 (1935).

[46] Roberts, *supra* note 30, at 292.

[47] 10 H. Remington, *supra* note 16, § 4004, at 10.

[48] *Id.*; *In re* Kalb, 54 F. Supp. 535 (E.D. Wis. 1944).

[49] As stated in *In re* Kalb, 54 F. Supp. 535, 537 (E.D. Wis. 1944): "When this section of the act was extended to March 4, 1944, our country was awakening to the need of a great defense effort. Many of the great nations of the world were then engaged in war. As was said by our Supreme Court in Fable v. United States, 320 U.S. 549, decided January 3, 1944, 'The danger of attack by our present enemies, if not imminent, was real, as subsequent events have grimly demonstrated'. Congress realized that if war came our economy would be under great strain and there would of necessity be many dislocations, difficulties, and restrictions. We knew that agriculture would be called upon to expand greatly, for increased production would be essential to victory. Congress likewise bore in mind that upon the cessation of hostilities in World War I it was agriculture which first felt the chill breath of the great depression which all agree was an aftermath of that disrupting struggle. It must be assumed that Congress had sufficient justification to enact the original legislation.'"

[50] 10 H. Remington, *supra* note 16, § 4004.

[51] As a sign of the times, the following statement of Congressman Charles U. Truax in support of the Frazier-Lemke Act may be found at Hanna, *supra* note 30, at 8 n.8:

"On June 18, 1934, the Congress of the United States passed H.R. 9865, a new declaration of independence for the American farmer. When this law becomes effective I can but wonder what will become of the ruthless money lender when the breath of Gold leaves his feculent body and a financial death stops the rattling of his grasping brain, for he is unfit for the higher realm of life and too foul for the one below. He cannot be buried in the earth, lest he provoke a pestilence; nor in the sea, lest he poison the fish; nor swing in space like Mahomet's coffin, lest the circling worlds in trying to avoid contamination, crash together, wreck the universe, and bring again the noisome reign of chaos and Satan."

[52] The trilogy of cases is Wright v. Union Cent. Life Ins. Co., 311 U.S. 273 (1940); Wright v. Vinton Branch of the Mountain Trust Bank, 300 U.S. 440 (1937); Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935).

[53] 295 U.S. 555 (1935).

[54] *In re* Radford, 8 F.Supp. 489 (W.D. Ky. 1934).

[55] Louisville Joint Stock Land Bank v. Radford, 74 F.2d 576 (6th Cir. 1935).

[56] Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935).

[57] *Id.* at 579 n.7.

[58] *Id.* at 581-86.

[59] *Id.* at 586-89.

[60] *Id.* at 589-93; *but cf.* Rogers, "The Impairment of Secured Creditors' Rights in Reorganization: A Study of the Relationship Between the Fifth Amendment and the Bankruptcy Clause, 96 *Harvard L. Rev.* 973 (1983) (this article argues contrary to this proposition, which appears to be the basis of the *Radford* decision); *see also* Countryman, "Treatment of Secured Claims in Chapter Cases," 82 *Com.L.J.* 349 (1977).

[61] *Id.* at 589-90.

[62] *Id.* at 954-95.

[63] *Id.* at 594-95.

[64] Actually, the decision is unclear as to (a) whether the "taking" of the rights in question was improper *per se*, or (b) whether the "taking" was proper, but not achieved with sufficient "due process" of law, or (c) whether both the "taking" and "due process" prohibitions of the fifth amendment were contravened. *See* Rogers, *supra* note 60; Countryman, *supra* note 60.

[65] 295 U.S. at 596.

[66] *Id.* at 596-97.

[67] *Id.* at 598-602.

[68] 10 H. Remington, *supra* note 16, § 4005.

[69] *Id.*

[70] Ch. 792, 49 Stat. 942 (1935).

[71] 10 H. Remington, *supra* note 16, § 4005, at 12; for a comparison of the changes in the second Act, *see* Wright v. Vinton Branch of the Mountain Trust Bank, 300 U.S. 440, 464-66 n.9 (1937).

[72] 300 U.S. 440 (1937).

[73] 311 U.S. 273 (1940).

[74] 300 U.S. at 456-57.

[75] *Id.* at 458 n.2. *See Wright I,* 300 U.S. at 465-66 n.9, for a comparison of the first and second Frazier-Lemke Acts.

[76] *Id. But see Wright II,* 311 U.S. 273, for an interpretation of when a public auction was appropriate.

[77] 300 U.S. at 458-61.

[78] *Id.* at 460-64.

[79] *Id.*

[80] *Id.* at 465-68.

[81] *Id.* at 468-70.

[82] *Id.*

[83] 311 U.S. 273 (1940).

[84] *Id.*

[85] As the Court stated: "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. Safeguards were provided to protect the rights of secured creditors, throughout the proceeding, to the extent of the value of the property. There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

Id. at 278-79 (citations omitted).

[86] *Id.* at 278–82; *see infra* note 88 and accompanying text.

[87] *Id.* at 280–81, where the Court stated:

"To hold that they empowered the court to deprive the debtor of his express and fundamental statutory right to redeem at the reappraised value or at the value fixed by the court would be to imply a power of forfeiture wholly incompatible with the broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression."

[88] The facts of *Wright II* indicate that the complaining creditor was owed approximately $16,000 and that the appraised value of the farm was only approximately $6,000. *Id.* at 276. Thus, under the redemptive powers granted to the farmer, Mr. Wright could buy back his farm for less than one-half of the mortgage debt encumbering the property. *Id.*

[89] This precept was recently reaffirmed in the case of United States v. Security Industrial Bank, 103 S. Ct. 407 (1982); *but see* Rogers, *supra* note 61, for criticism of this precept. Rogers reasons that "the subsequent Frazier-Lemke Act cases [Wright I and Wright II] . . . overrule or substantially undercut the vitality of *Radford*," *id.* at 981, but that "in light of *Security Industrial Bank*, it appears that the Supreme Court will continue to accept at the least the general principle for which Radford stands—that the fifth amendment may impose some limitations on the retroactive application of bankruptcy legislation—although the Court's reasons for so doing are not entirely clear." *Id.* at 1018. *See also* Countryman, *supra* note 60.

[90] *See supra* notes 23–25 and accompanying text.

[91] The Chandler Act, ch. 575, §§ 401–526, 52 Stat. 840, 916–30 (1938).

[92] *Id.* §§ 301–399, 52 Stat. at 905–16.

[93] *See generally* Anderson, "Partially Secured Creditors: Their Rights and Remedies under Chapter XI of the Bankruptcy Act," *La. L. Rev.* 1003 (1977); Andersen, "Secured Creditors: Their Right and Remedies under Chapter XI of the Bankruptcy Act," 36 *La. L. Rev. 1* (1975).

[94] *See generally* the authorities cited *infra* note 95.

[95] *See generally* Anderson & Rainach, *supra* note 1; Anderson & Ziegler, *supra* note 27. Commentary on Chapter XII had been virtually nonexistent from the time of its enactment in 1938 as part of the Chandler Act until 1975. However, since 1975, several articles have been written analyzing Chapter XII, and at least one book has been written on the subject. *See, e.g.*, W. Norton, *Real Property Arrangements: Chapter XII, Federal Bankruptcy Act* (1977); Anderson & Ziegler, *supra* note 27; Dole, "The Chapter XII Cram-down Provisions, 82 *Com. L.J.* 197 (1977); Fine, "Unjamming the 'Cram-down', 52 *Am. Bankr. L.J.* 321 91978); Gilbert & Massari, "Chapter XII 'Cram-down'—Bad Medicine or Just Desserts?," 52 *Am. Bankr. L.J.* 99 (1978); Merrick & Crames, "Chapter XII Comes of Age: Recent Developments," 51 *Am. Bankr. L.J.* 291 (1977); Comment, "Consitutional Limitation on the Bankruptcy Power: Chapter XII Real Property Arrangements," *N.Y.U. L. Rev.* 362 (1977).

[96] Prior to the real estate recession in 1974–1975, there were only seven reported cases concerning confirmation of Chapter XII plans. Sumida v. Yumen, 409 F.2d 654 (9th Cir. 1969); Rader v. Boyd, 267 F.2d 911 (10th Cir. 1959); Meyer v. Rowen, 195 F.2d 263 (10th Cir. 1952); *In re* Herweg, 119 F.2d 941 (7th Cir. 1941); Kyser v. MacAdam, 117 F.2d 232 (2d Cir. 1941); *In re* Hamburger, 117 F.2d 932 (6th Cir. 1941), Kunze v. Prudential Ins. Co. of America, 106 F.2d 917 (5th Cir. 1939).

After 1974 there was a tremendous increase in reported Chapter XII cases analyzing confirmation of plans and many other aspects of Chapter XII proceedings. Bizzell Pharmacy, Inc. v. Hemingway, 12 Collier Bankr. Cas. 2d 270 (4th Cir. 1977); *In re* Pembroke Manor Apts., 547 F.2d 805 (4th Cir. 1977); *In re* Benson, 9 Bankr. 854 (Bankr., N.D. Ill. 1981); *In re* Castle Village Co., 4 Bankr. Ct. Dec. (CRR) 730 (Bankr., S.D.N.Y. 1978); *In re* Walker, 4 Bankr. Ct. Dec. (CRR) 698 (Bankr., M.D. Fla. 1978); *In re* Bell Tower Plaza, 4 Bankr. Ct. Dec. (CRR) 678 (Bankr., C.D. Cal. 1978); *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978); *In re* LaMarche and Cerino, 4 Bankr. Ct. Dec. (CRR) 443 (Bankr., M.D. Fla. 1978); *In re* Stillbar Constr. Co., 4 Bankr. Ct. Dec. (CRR) 452 (Bankr., N.D. Ga. 1978); *In re* Bergman, 3 Bankr. Ct. Dec. (CRR) 1313 (Bankr., S.D.N.Y. 1978); *In re* Pickett, Gardner, Landers & Assocs., 3 Bankr. Ct. Dec. (CRR) 727 (Bankr., N.D. Ga. 1977); *In re* Hobson Pike Assocs., 15 Collier Bankr. Cas. 346 (Bankr., N.D. Ga. 1977); *In re* Fierman & Fierman, 3 Bankr. Ct. Dec. 1006 (CRR) (Bankr., E.D. Pa. 1977); *In re* Bergman, 14 Collier Bankr. Cas. 2d 222 (Bankr., S.D.N.Y. 1977); *In re* Bekare Realty Assocs., 14 Collier Bankr. Cas. 2d 202 (Bankr., E.D. Pa. 1977); *In re* Brookhollow Assocs., 14 Collier Bankr. Cas. 2d 251 (Bankr., D. Mass. 1977); *In re* Nevada Towers Assocs., 14 Collier Bankr. Cas. 2d 146 (Bankr., S.D.N.Y. 1977); *In re* Romano & Romano, 12 Collier Bankr. Cas. 2d 513 (Bankr., N.D. Ill. 1977); *In re* Tucker, 13 Collier Bankr. Cas. 2d 148 (Bankr., D. Conn. 1977); *In re* Marietta Cobb Apts., Co., 3 Bankr. Ct. Dec. (CRR) 720 (Bankr., S.D.N.Y. 1977); *In re* Country Green Ltd. Partnership, 3 Bankr. Ct. Dec. (CRR) 427 (Bankr., W.D. Va. 1977); *In re* Pine Gate Assocs., 3 Bankr. Ct. Dec. (CRR) 301 (Bankr., N.D. Ga. 1977); *In re* Triangle Inn Assocs., 3 Bankr. Ct. Dec. (CRR) 716 (Bankr., E.D. Va. 1977); *In re* Hartsdale Assocs., 3 Bankr. Ct. Dec.(CRR) 460 (Bankr., S.D.N.Y 1977); *In re* Hartsdale Assocs., 13 Collier Bankr. Cas. 2d 692 (Bankr., S.D.N.Y. 1977); *In re* St. Simon's Properties, 2 Bankr. Ct. Dec. (CRR) 1400 (Bankr., N.D. Ga 1976); *In re* Nob Hill Apts., 2 Bankr. Ct. Dec. (CRR) 1463 (Bankr., N.D. Ga. 1976); *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976); *In re* Pine Gate Assocs., 3 Bankr. Ct. Dec. (CRR) 141 (Bankr., N.D. Ga. 1976); *In re* Pine Gate Assocs., 3 Bankr. Ct. Dec. (CRR) 137 (Bankr., N.D. Ga. 1976); *In re* Hartsdale Assocs., 13 Collier Bankr. Cas. 2d 1275 (Bankr., S.D.N.Y. 1976); *In re* Huntley Square Assocs., 2 Bankr. Ct. Dec. (CRR) 1417 (Bankr., D. Md. 1976); *In re* Sixth Ave. Inv. & Dev. Co., 2 Bankr. Ct. Dec. (CRR) 1222 (Bankr., S.D. Cal. 1976); Darvilla Housing Corp. v. Accousti, 2 Bankr. Ct. Dec. (CRR) 1093 (Bankr., D. Conn. 1976); *In re* Hall Assocs., 2 Bankr. Ct. Dec. (CRR) 432 (Bankr., E.D. Pa. 1976); *In re* Helmwood Apts., 2 Bankr. Ct. Dec. (CRR) 1151 (Bankr., N.D. Ga 1976); *In re* Bearden, 2 Bankr. Ct. Dec. (CRR) 1180 (Bankr., N.D. Ga. 1975); *In re* Consol. Motor Inns, 1 Bankr. Ct. Dec. (CRR) 1526 (Bankr., N.D. Ga. 1975).

[97] *See* the authorities cited *supra* notes 71–88 and accompanying text. The farmer-debtor was discharged of any personal liabilities, which had the ultimate effect of reducing the "scaled down" lien(s) on the farm to an *in rem* status. *See supra* note 44 and accompanying text.

[98] *See* the authorities cited *supra* notes 71–88 and accompanying text.

[99] *See* the authorities cited *supra* notes 95 & 96 and accompanying text.

[100] Wachovia Bank & Trust Co. v. Harris. 455 F.2d 841 (4th Cir.), *cert. denies*, 409 U.S. 844 (1972) (a Chapter X case, where the secured debt was reamortized over 20 years); *In re* Benson, 9 Bankr. 854 (Bankr., N.D. Ill. 1981) (a Chapter XII case, where the interest rate was reduced to the lender's cost of money and where the mortgage debt reamortized over 20 years); *In re* Castle Village Co., 4 Bankr. Ct. Dec. (CRR) 730 (Bankr., S.D.N.Y. 1978); *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978); *In re* Triangle Inn Assocs., 3 Bankr. Ct. Dec. (CRR) 716 (Bankr., E.D. Va. 1977).

[101] *See* the cases cited *supra* note 100.

[102] *See* the cases cited *supra* note 100.

[103] *See* the cases cited *supra* note 100.

[104] Rader v. Boyd, 267 F.2d 911 (10th Cir. 1959); Kyser v. MacAdam, 117 F.2d 232, 238 (2d Cir. 1941); *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976); W. Norton, *supra* note 27, pts. 24 & 25, at 80–118.

[105] *In re* Benson, 9 Bankr. 854 (Bankr., N,D, Ill. 1981); *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978); *In re* Hartsdale Assocs., 3 Bankr. Ct. Dec. (CRR), 462 (Bankr., S.D.N.Y. 1977); *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478, 1491 (Bankr., N.D. Ga. 1976); *In re* Accousti, 2 Bankr. Ct. Dec. (CRR) 1093 (Bankr., D. Conn. 1976); W. Norton, *supra* note 27, pts. 24 & 25, at 80–118; *See also In re* 620 Church St. Bldg., Corp., 299 U.S. 24 (1936); Anderson, "Partially Secured Creditors: Their Rights and Remedies Under Chapter XI of the Bankruptcy Act," 37 *La. L. Rev.* 1003 (1977).

[106] *See* the authorities cited *supra* note 105.

[107] *See* the authorities cited *supra* note 105.

[108] *See* the authorities cited *supra* note 105.

[109] *See* Comment, *supra* note 95.

[110] *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478, 1482 (Bankr., N.D. Ga. 1976); W. Norton, *supra* note 27, pts. 24 & 25, at 80–118; *see generally* the authorities cited *supra* note 105.

[111] Act of July 1, 1898, ch. 541, § 57h, 30 Stat. 544, 560. For a general discussion of this proposition, *see* Anderson, *supra* note 105.

[112] *See generally* Anderson & Ziegler, *supra* note 27.

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] 9 Bankr. 854 (Bankr., N.D., Ill., 1981). A second reported case, *In re* Dick, 296 F.2d 912 (7th Cir. 1961), was found, but it gives no real insight as to the farmer relief provided.

[119] The Chandler Act, ch. 575, § 461(11), 52 Stat. 840, 922 (1938).

[120] 75 F.2d 941 (2d Cir. 1935). The court in *Benson* cited Wachovia Bank & Trust Co. v. Harris, 455 F.2d 841 (4th Cir.), *cert. denied*, 409 U.S. 844 (1972) (a real estate reorganization case under Chater X of the old Act, where an interim construction loan on real estate was reamortized under a plan over 20 years) for the proposition that the plan did not have to provide payment, nor adequate protection, to a secured creditor that was *immediately* (and completely) compensatory.

[121] A Chapter XII plan was required to provide a secured creditor, in order to be "crammed down," with "adequate protection for the realization by [the creditor] of the value of [its] debt." § 461(11), old Bankruptcy Act, formerly 11 U.S.C. § 861(11).

[122] For examples of extension plans which were confirmed under these standards, *see In re* Benson, 9 Bankr. 854 (Bankr. N.D. Ill. 1981); *In re* Triangle Inn Assocs., 3 Bankr. Ct. Dec. (CRR) 716 (Bankr., E.D. Va. 1977); *In re* Hobson Pike Assocs., 15 Collier Bankr. Cas. 346 (Bankr., N.D. Ga. 1977); *In re* Walker, 4 Bankr. Ct. Dec. (CRR) 698 (Bankr., M.D. Fla. 1978); *see generally* Anderson & Ziegler, *supra* note 27; *see also* Wachovia Bank & Trust Co. v. Harris, 455 F.2d 841 (4th Cir.), *cert. denied*, 409 U.S. 844 (1972) (a Chapter X case achieving a 20-year restructuring of an interim loan secured by real estate).

[123] 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978).

[124] *Id.* at 465.

[125] *See, e.g., In re* Pine Gate Assoc., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976); *In re* Castle Village Co., 4 Bankr. Ct. Dec. (CRR) 730 (Bankr., S.D.N.Y. 1978).

[126] *Id.* Anderson, *supra* note 7; *U. Ill. L.F.* 251, (1980); Klee, "All You Ever Wanted to Know About Cram Down Under the New Bankruptcy Code," 53 *Am. Bankr. L.J.* 133 (1979); Comment, "From Debtor's Shield to Creditor's Sword: Cram Down Under the Chandler Act and the Bankruptcy Reform Act," 55 *Chi.-Kent L. Rev.* 713 (1979); *see also* the authorities cited at note 29, *supra*.

[127] *See generally* the authorities cited *supra* notes 29 and 126.

[128] 11 U.S.C. § 1111(b) (1986).

[129] *Id. See generally* Klee, *supra*, note 126, at 150–56; Eisenberg, "the Undersecured Creditor in Reorganizations and the Nature of Security," 389 Vand. L. Rev. 931 (1985); *In re* Griffiths, 10 Bankr. Ct. Dec. (CRR) 173 (Bankr. D. Kan. 1983); *In re* Hallam; 10 Bankr. Ct. Dec. (CRR) 535 (Bankr., E.D. Tenn. 1983); *In re* Elijah, 41 Bankr. 348 (Bankr., W.D. Mo. 1984); Anderson, *supra* note 7, § 10.10.

[130] *See* the authorities cited *supra* note 129.

[131] *See* the authorities cited *supra* note 129. However, if the creditor's lien is worthless or of little value, he is not eligible to make an election under § 1111(b) of the new Code. *See* Klee, *supra* note 126, at 153.

[132] 11 U.S.C. § 1129(b)(2)(A) (1986); *In re* Southern Missouri Towing Service, Inc., 35 Bankr. 313 (Bankr., W.D. MO. 1983); *see* Klee, *supra* note 126, at 153.

[133] As one commentator has opined, §§ 1111(b)(2), 1129(a)(7)(B), and 1129(b)(2) appear to preclude proponents of a plan from "appraising a creditor's collateral and buying him out." Klee, "The New Bankruptcy Act of 1978," 64 *A.B.A. J.* 1865 (1978). *See also* the authorities cited *supra* note 129.

[134] U.S.C § 1129(b)(2)(a)(i) (1986).

[135] The main precepts of the rule of absolute priority are contained in various Supreme Court decisions. Reconstruction Fin. Corp. v. Denver R.G.W.R. Co., 328 U.S. 495 (1946); Group of Investors v. Milwaukee R.R., 318 U.S.C 523 (1943); Consolidated Rock Prods. Co. v. DuBois, 312 U.S. 510 (1941); Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106 (1939). For an expanded discussion of how the rule of absolute priority has been modified under the present Bankruptcy Code, *see* Klee, "All You Ever Wanted to Know about Cram Down Under the New Bankruptcy Code," 53 *Am. Bankr.*

L.J. 133 (1979). The rule of absolute priority provides that each senior class in a reorganization must be satisfied in full before the next descending (or any) junior class can receive anything. *See generally* J. Anderson, *supra* note 7, §§12.29–12.38.

[136] *In re* Tamarack Trail Co., 23 Bankr. 3 (Bankr., S.D. Ohio 1982); *In re* Landau Boat Co., 8 Bankr. 436 (Bankr., W.D. Mo. 1981); *In re* Sullivan, 7 Collier Bankr. Cas. 2d 513, 26 Bankr. 677 (Bankr., W.D.N.Y. 1982); *In re* Tomlin, 22 Bankr. 876 (Bankr., M.D. Ala. 1982); *In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982). Farmers are subject to this rule of reorganization law. *See In re* Butler, 42 Bankr. 777 (Bankr., E.D. Ark. 1984); *In re* Fursman Ranch, 36 Bankr. 907 (Bankr., W.D. Mo. 1984); *In re* Tomlin, 22 Bankr. 876 (Bankr., M.D. Ala. 1982).

[137] *In re* Potter Material Service, 781 F.2d 99 (7th Cir. 1986); *In re* U.S. Truck Co., Inc., 47 Bankr. 932, 12 Bankr. Ct. Dec. (CRR) 1088 (E.D. Mich. 1985); *In re* Jartan, Inc., 44 Bankr. 331, 379 (Bankr., N.D. Ill. 1984); *In re* Landau Boat Co., 8 Bankr. 436 (Bankr., W.D. Mo. 1981); *In re* Marston Enters., Inc., 13 Bankr. 514 (Bankr., E.D.N.Y. 1981); *cf. In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982).

[138] 11 U.S.C. § 1129(a)(11), provides: "Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Because of their cyclical cash flow and because of natural forces beyond their control (*e.g.*, weather, insects, etc.), farmers often have difficult problems in proving the feasibility of their plans. *See, e.g., In re* Clarkson, 767 F.2d 417 (8th Cir. 1985); *In re* Deile, 50 Bankr. 217 (Bankr., D. N.D. 1985); *In re* Hoff, 54 Bankr. 746 (Bankr., D.N.D. 1985); *In re* Hoffman, 52 Bankr. 212 (Bankr., D.N.D. 1985); *In re* Cothran, 45 Bankr. 836 (S.D.Ga. 1984); *In re* Stoffel, 41 Bankr. 390, 12 Bankr. Ct. Dec. (CRR) 79 (Bankr., E.D. Va 1984); *In re* White, 36 Bankr. 199 (Bankr., D.Kan. 1983).

[139] *See* authorities cited *supra* notes 126 & 129.

[140] *See* authorities cited *supra* notes 71–88 and accompanying text.

[141] *See* authorities cited *supra* notes 95 to 96.

[142] *In re* Benson, 9 Bankr. 854 (Bankr., N.D. Ill. 1981).

[143] *In re* KRO Assocs., 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978). In the *KRO* case, the court held that a first mortgage debt could be reduced to the value of the real property and that the debtor could pay the "scaled down" mortgage debt over a reasonable number of years, if there was provided a reasonable interest rate for the deferred payments, and if the debtor would provide evidence of (or a guaranty providing) a willingness to fulfill the repayment schedule proposed under the plan. *Id.* at 465.

[144] *Id.*

[145] 9 Bankr. 854 (Bankr., N.D. Ill. 1981).

[145a] Cited at note 118 *supra*.

[146] *See* authorities cited *supra* note 126 & 129; *but cf.* the cases cited at note 138, *supra*, which highlight the feasibility problems inherent in farmer "extension" plans.

[147] 15 Bankr. 35, 8 Bankr. Ct. Dec. (CRR) 365, 5 Collier Bankr. Cas. 2d 386 (Bankr., W.D. La. 1981); *see also In re* Iverson, 24 Bankr. 227 (Bankr., W.D. La. 1982).

[148] 9 Bankr. 854 (Bankr., N.D. Ill. 1981).

[149] 75 F.2d 941 (2d Cir. 1935).

[150] *In re* Hollanger, 15 Bankr. 35 (Bankr., W.D. La. 1981), where the court stated, at 46–47:

". . . The dissenting secured claimaint will be receiving the 'indubitable equivalent' . . . Stated another way, where a dissenting claimant is receiving payment in full over a reasonable period of time, with an appropriate interest or discount factor being paid, that creditor is receiving all the law requires, that is, . . . full payment over a reasonable period of time." *Accord: In re* Pikes Peak Water Co., 779 F.2d 1456, 1461 (10th Cir. 1985); *In re* Iverson, 24 Bankr. 227 (Bankr., W.D. La. 1982).

[151] *In re* Upshaw, No. 589-01026-M (Bankr., W.D. La. Aug. 11, 1981).

[152] *See supra* notes 147–50.

[153] The reduction of the mortgages debts to an *in rem* basis is consistent with the personal discharge from indebtedness granted to the Chapter 11 debtor upon confirmation. *See* 11 U.S.C. § 1141 (1986).

[154] 24 Bankr. 227 (Bankr., W.D. La. 1982).

[155] *In re* Adcock, No. 581-00577-M (Bankr., W.D. La. Dec. 28, 1981).

[156] 11 U.S.C. §§ 361, 1129(b)(2)(A) (1986).

[156a] Wright v. Union Cent. Life Ins. Co., 311 U.S. 273 (1940).

[157] 24 Bankr. 227 (Bankr., W.D. La. 1982).

[158] 31 Bankr. 782 (Bankr., E.D. Mo. 1983).

[159] *See* 11 U.S.C. § 1129(b)(1) (1986), which prohibits unfair discrimination.

[160] *In re* Sun Country Dev., Inc., 764 F.2d 406 (5th Cir. 1985). This treatment of secured claims is supported by the legislative history of the Code, where it is stated that "abandonment [e.g., transfer] of the collateral to the [secured] creditor would clearly satisfy the indubitable equivalence" necessary for a cram down. 124 Cong. Rec. H.11, 103, at 104 (daily ed. Sept. 28, 1978). *See also In re* Fursman Ranch, 38 Bankr. 907 (Bankr., W.D. Mo. 1984), where the court confirmed a farmer-debtor's plan which satisfied certain secured creditors by returning a portion of their collateral and paying the balance of their claims through deferred cash payments. The decision correctly states "there is no statutory bar in the Code to the plan proposed here to return part of the collateral and pay for the balance." *Id* at 909. *But cf. In re* Elijah, 41 Bankr. 348 (Bankr., W.D. Mo. 1984), where a farmer plan proposed the transfer of a portion of collateral to an oversecured creditor in full satisfaction of its claim, and the bankruptcy court committed error in denying confirmation of the plan because the creditor made an election under Section 1111(b). The court misinterpreted the section, holding that the election precluded a transfer of property in satisfaction of the claim. *And see In re* Griffiths, 7 Bankr. 873, 10 Bankr. Ct. Dec. (CRR) 173 (Bankr., D. Kan. 1983) (holding no partial return of collateral, plus cash, could satisfy an undersecured creditor making a § 1111(b) election).

[161] *See* notes 128–138, *supra*, and the accompanying text.

[162] 27 Bankr. 873, 10 Bankr. Ct. Dec. (CRR) 173 (Bankr., D. Kan. 1983).

[163] 10 Bankr. Ct. Dec. (CRR) at 174.

[164] *See generally* J. Anderson, *supra* note 7, at § 10.10; Klee, *supra* note 126. This section precludes the result obtained by a Chapter XII debtor in the case of *In re* Pine Gate Assocs., 2 Bankr. Ct. Dec. (CRR) 1478 (Bankr., N.D. Ga. 1976). Whatever policies underlie § 1111(b) (which policies are unknown or uncertain because of a lack of legislative history explaining the rationale behind this particular section of the Code), one may argue that statutory provisions restricting owners of tax shelter vehicles from cashing out *in rem* mortgages to gain a form of financial windfall (as apparently or arguably occurred in the *Pine Gate* case) should not apply to a family farmer (who will normally have no financial resources to even consider a "cash out") so as to restrict or prevent relief from an oppressive debt structure.

[165] 29 Bankr. 343, 10 Bankr. Ct. Dec. (CRR) 535 (Bankr., E.D. Tenn. 1983).

[166] *In re* Southern Missouri Towing Service, Inc., 35 Bankr. 313 (Bankr., W.D. Mo. 1983).

[167] 41 Bankr. 348 (Bankr., W.D. Mo. 1984).

[168] 124 Cong. Rec. H.11, 103, at 104 (daily ed. Sept. 28, 1978).

[169] In re Sun Country Dev., Inc., 764 F.2d 406 (5th Cir. 1985). *See also In re* Weiberg, 31 Bankr. 782 (Bankr., E.D. Mo. 1983), where the court, although denying confirmation, expressed no reservation in its opinion that the transfer of property in satisfaction of claims (and particularly secured claims *via* receipt of the underlying collateral) could form the basis of a farmer reorganization plan; and *In re* Fursman Ranch, 38 Bankr. 907 (Bankr., W.D. Mo. 1984), where the court confirmed a farmer-debtor's plan which satisfied certain secured creditors by returning a portion of their collateral and paying the balance of their claims through deferred cash payments. *See generally* notes 158–160, *supra*, and the accompanying text.

The court in *Elijah* seemed to have reservations that the property would be transferred to the secured creditors, that the value of such property would be set by *appraisal* and that the appraised value might prove less than the value obtained by such creditors upon susequent resale. Apparently, the court felt that the satisfaction of claims through appraisal, rather than cash values, ran contrary to reorganization principles. However, this position is untenable in light of traditional reorganization principles. Appraisals are a necessary and integral part of fixing the rights of parties in reorganization cases. *See* Blum, *supra* note 7. For example, the appraisal (and valuation) of the property and business of a debtor on a going concern basis is the hallmark towards valuing any securities issued under a plan in satisfaction of claims and fixing the rights of parties in a reorganized entity. Protective Committee for Independent Stockholders, Inc. v. Anderson, 390 U.S. 414 (1968). Further, valuation of real estate has traditionally been used to determine which real estate liens against property are "under water" and without value. *See* the authorities cited at note 105, *supra*. Thus, appraisals *per se* and as part of a plan's treatment of creditors should not make the plan treatment defective and preclude confirmation. If plans of reorganization can issue stock, debentures, or any other form of security to satisfy claims based on the appraisal or valuation of the securities issued (transferred) under the plan, *a fortiori* a plan should be able to transfer real property to satisfy claims based upon the appraised value of the real estate.

[170] *See generally* Coogan, "The New Bankrupcty Code: The Death of Security Interest?" 14 *Ga. L. Rev.* 153 (1980); Orr & Klee, "Secured Creditor Under the New Bankruptcy Code," 11 *U.C.C.L.J.* 312 (1979).

[171] *See* The authorities cited *supra* note 170. Essentially, the debtor may propose that the crop proceeds and new crops grown subsequently will constitute collateral upon which the secured crop lender may be given a "replacement lien." *See* 11 U.S.C. § 361(a) (1986).

[172] 11 U.S.C. § 361(a) (1986).

[173] 38 Bankr. 267, 11 Bankr. Ct. Dec. (CRR) 977 (Bankr., D.N.D. 1984).

[174] However, this decision was initially reversed on appeal by the district court. *In re* Berg, 42 Bankr. 335 (D.N.D. 1984), discussed at notes 179–81 *infra*, and the accompanying text; but the district court's decision was then reversed and remanded by the Court of Appeals. *In re* Martin, 761 F. 2d 472 (8th Cir. 1985), discussed at notes 182–184, *infra*, and the accompanying text.

[175] 38 Bankr. 859, 11 Bankr. Ct. Dec. (CRR) 835 (Bankr., D.S.D. 1984).

[176] *See* 11 U.S.C. §361(1) (1986).

[177] 41 Bankr. 524 (Bankr., D. Minn. 1984).

[178] 27 Bankr. 748 (Bankr. S.D. Ohio 1983).

[179] 42 Bankr. 335 (D.N.D. 1984). This decision also reversed the holding of *In re* Nikolaisen, 38 Bankr. 267, 11 Bankr. Ct. Dec. (CRR) 977 (Bankr., D.N.D. 1984). *See* notes 173–4, *supra*, and the accompanying text. *In re* Berg was then itself reversed and remanded. *In re* Martin, 761 F. 2d 472 (8th Cir. 1985).

[180] "[T]hough the creditor might not be able to retain his lien upon the specific collateral held at the time of filing, the purpose of the action [11 U.S.C. §361] is to insure that the secured creditors receives the value for which he bargained." 42 Bankr. at 338, *quoting* HR Doc. No. 545, 95th Cong., 1st Sess. 39 (1977).

[181] 42 Bankr. at 338. "It should also be noted that weather, fire, explosions or other disasters could partially or totally destroy the 1984 crop. Thus, a lien on crops not yet in existence and that are purely speculative in nature as well as being subject to the uncertainties of weather and other natural phenomena is not the indubitable equivalent of a lien on already existing commodities in storage." *Id.*

[182] 761 F. 2d 472 (8th Cir. 1985).

[183] 38 Bankr. 859, 11 Bankr. Ct. Dec. (CRR) 835 (Bankr., D.S.D. 1984).

[184] 761 F. 2d. at 477–8.

[185] 734 F.2d. 426 (9th Cir. 1984).

[186] *Id.* at 435.

[186a] *See, e.g., In re* Polzin, 49 Bankr. 370 (Bankr., D. Minn. 1985).

[187] The reader should note that this writer believes that *American Mariner* was incorrectly decided. In essence, *American Mariner* held that an inadequately secured creditor in a Chapter 11 case, who is not entitled to relief from the automatic stay under section 363(d)(2) because its collateral was necessary to an effective reorganization, could not be denied relief from the stay under section 362(d)(1) where the debtor only offered periodic cash payments equal to the *depreciation* in the collateral pursuant to section 361(1). Rather, the Court held that the undersecured creditor must receive the "indubitable equivalent" of its entire bargain under section 361(3), which was erroneously construed by the Court of Appeals for the Ninth Circuit to include the present value of the creditor's state law rights to foreclose its collateral (and liquidate it) and reinvest the proceeds. This holding requires essentially that monthly interest payments on the liquidation value of the collateral must be paid to the undersecured creditor, starting

from the point of time in which the creditor could have foreclosed and sold the collateral (and continuing until the confirmation of a plan).

The Committee on Stays, Executory Contracts, and Property of the Estate for the National Bankruptcy Conference took issue initially with the *American Mariner* decision, arguing that the decision: (1) ignores the language of section 361 in general and section 361(3) in particular, which speaks of "adequate protection" of and the "indubitable equivalent" of the secured creditor's interest *in its collateral*; (2) misreads the House and Senate Reports, which make no reference (as admitted by the Court) to the "secured creditor's legal right to take possession of and sell the collateral" or its "equitable right to reinvest the proceeds of the sale," 734 F.2d at 430-1, which were written before the *indubitable equivalent* language was incorporated in section 361(3); (3) erroneously equates "indubitable equivalent" of the secured creditor's interest *in the collateral* in section 361(3) to "indubitable equivalent" of *the secured claim* in section 1129(b)(2)(A)(iii), where the latter phrase appears as an alternative to the discounted present value "as of the effective date of the plan" of deferred cash payments under the plan; (4) ignores the statutory scheme, which is that adequate protection under section 361 [with the back-up of super priority under section 507(b)] was designed to preserve only the value of the secured creditor's interest *in the collateral* in order to fix the amount of the secured claim, which must then be fully compensated by present value under the plan, whether the plan is confirmed under section 1129(a)(7) or under section 1129(b)(2)(A); (5) allows an undersecured creditor to obtain, early in the proceeding, the full value of its claim on the encumbered collateral, although the value of the unsecured creditors' claims on unencumbered collateral remains at risk throughout the case; and, at the same time, gives the undersecured creditor postpetition interest on the secured part of its claim by way of adequate protection, although section 506(b) does not allow any postpetition interest as part of the secured portion of the undersecured claim; (6) will jeopardize many reorganizations by enabling secured creditors to obtain, early in the Chapter 11 case, the full value of their claims, whereas the statutory scheme requires that they receive that value only on confirmation of a plan. This committee's recommendations are subject to further analysis before the National Bankruptcy Conference takes an official position for or against the committee's recommendations and arguments. However, this writer believes that the arguments of the committee are correct and highlight the errors in the rationale of the *American Mariner* decision. Further, the Court of Appeals for the Eighth Circuit has rejected the holding of *American Mariner*. *In re* Briggs Transp. Co., 780 F.2d 1339 (8th Cir. 1985); *but cf.* Grundy Nat. Bank v. Tandem Mining Corp., 754 F.2d 1436 (4th Cir. 1985) (wherein the Fourth Circuit adopted *American Mariner*).

It is highly doubtful that secured creditors "bargain for" any rights other than the liquidation value of their collateral, and so long as this primary right is reasonably maintained under any family farmer reorganization bill, there will be maintained an appropriate balance of policies (*i.e.*, a balancing which will arguably be more favorable to secured creditors than the Frazier-Lemke Act).

[187] *See supra* notes 71-88, 118-25 and accompanying text.

[188] *See supra* notes 90-117 and accompanying text.

[189] *See supra* notes 71-88 and accompanying text.

[190] 4 Bankr. Ct. Dec. (CRR) 462 (Bankr., S.D.N.Y. 1978). The holding of *KRO* was conditioned upon the debtor's amending its plan to provide some covenant or guaranty evincing a willingness to fulfill the repayment proposal contained on the debtor's plan. *See supra* note 143 and accompanying text.

[191] *See also* the authorities cited *supra* at notes 71-88 regarding cases under § 75 of the old Act. The result should be the same, if a farm was involved, rather than an office building.

[192] *See* Klee, *supra* notes 126 & 133, and accompanying text; *see also* the cases cited at note 136, *supra*.

[193] *See* the authorities cited *supra* note 126.

[194] 11 U.S.C. §§ 361(3), 506(a) (1986). When read together, §§ 506 and 361 operate to reinforce the existing *long-standing "rule to the effect the valueless junior secured positions or unsecured deficiency claims will not be entitled to adequate protection.* 2 W. Collier, *Collier on Bankruptcy ¶¶ 361-01 to -13 (15th ed. 1986); the reader should note that this treatise is the fifteenth edition and discusses bankruptcy law under the new Code; a discussion of the old Act is contained in the fourteenth edition, which is cited supra* note 9. *See* also the authorities cited *supra* note 105.

"The evidence before the District Court is not presented by the record. And as the Court of Appeals, if the appeal had been allowed, could have revised the ruling of the court below only in matter of law, it necessarily follows—and was conceded at the bar—that petitioners are bound by the findings of fact. Petitioners insist that their consent to the plan of reorganization was necessary or that their claims should have been accorded 'adequate protection.' But the adequate protection to which the statute refers is 'for the realization of the value of the interests, claims or liens' affected. Here the controlling finding is not only that there was no equity in the property above the first mortgage but that petitioners' claims were appraised by the court as having 'no value.' There was no value to be protected. This finding embraces whatever interests petitions may have as junior lienors under the Illinois law and, in the same aspect, the constitutional argument is unavailing as petitioners have not shown injury."

In re 620 Church St. Bldg. Corp., 299 U.S. 24, 27 (1936).

[195] 11 U.S.C. §§ 1129(b)(2)(A) (1986). *In re* Southern Missouri Towing Service, Inc., 35 Bankr. 313 (Bankr. W.D. Mo. 1983

[196] This hypothetical example is extracted from Anderson, *supra* note 1, which advanced a proposition similar to the one in the text accompanying this footnote.

[197] 11 U.S.C. § 1129(b)(2)(B) (1986). In the cases of the *In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982) and *In re* Marston Enters., Inc., 13 Bankr. 514 (Bankr., E.D.N.Y. 1981), debtors' plans were denied confirmation which attempted to allow the debtors to retain their real property and only pay secured creditors the fair market value of the property.

[197a] *Id.; see* the cases cited at note 136, *supra*.

[198] *See* the authorities cited at note 136, *supra*.

[199] *Id.*

[200] Reconstruction Finance Corp. v. Denver & R.G.W.R., 328 U.S. 498 (1946); Group of Inst. Investors v. Milwaukee R., 318 U.S. 523 (1943); Consolidated Rock Prods. Co. v. DuBois, 312 U.S. 510 (1941); Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106 (1939); for an expanded discussion *see* Blum, *supra* note 7; and for a discussion of how the rule of absolute priority has been modified under the new Code, *see* Klee, *supra* note 126; Anderson, *supra* note 7, § 12.24.

[201] *Accord*, Klee, *supra* note 126, at 150-56; Anderson, *supra* note 7, § 12.08.

[202] *Id.*

[203] See the authorities cited at note 136, *supra*.

[204] *See* authorities cited *supra* notes 71-88 and accompanying text.

[205] 11 U.S.C. § 1129(a)(10); *In re* Pine Lake Village Apartment Co., 19 Bankr. 819 (Bankr., S.D.N.Y. 1982); *In re* Marston Enters., Inc., 13 Bankr. 514 (Bankr., E.D.N.Y. 1981).

[206] *See* the authorities cited at notes 29 & 126, *supra*.

[207] *See, e.g., In re* Russell, 44 Bankr. 452 (Bankr., E.D.N.C. 1984); *In re* Lloyd, 31 Bankr. 283 (Bankr., W.D. Ky. 1983).

[208] 11 U.S.C. § 1325 (1986).

[209] 727 F.2d. 1379 (5th Cir. 1984).

[210] 11 U.S.C. § 303(a) provides that an involuntary case cannot be commenced against a farmer.

[210a] 11 U.S.C. § 1112(c) (1986).

[211] 747 F.2d 483 (8th Cir. 1984).

[212] *See, also, In re* Cassidy Land and Cattle Co., Inc., 747 F.2d (8th Cir. 1984) (liquidation plan may be confirmed over farmer-debtor's objection); *In re* J. F. Toner & Son, Inc., 40 Bankr. 461 (Bankr., W.D. Va. 1984) (same holding); *In re* Tinsley, 36 Bankr. 807 (Bankr., W.D. Ky. 1984) (same holding).

[213] *Compare, In re* Lange, 39 Bankr. 483 (Bankr., D. Kan. 1984) (liquidation plan can only be confirmed with the consent of the farmer-debtor); and *In re* Blanton Smith Corp., 7 Bankr. 410 (Bankr., M.D. Tenn. 1980) (same holding), *with* the cases cited at notes 209, 211 and 212, *supra*.

[214] 11 U.S.C. § 1112(c) (1986).

[215] Act of March 3, 1933, ch. 204 § 75, 47 Stat. 1467, 1470-73. This writer believes that the present legislative proposals to amend the Bankruptcy Code are not far removed in many respects from the legislation created under Section 75 of the old Bankruptcy Act.

[216] 11 U.S.C. §§ 1301, *et seq.*

[217] This writer believes that the House Bill, like Section 75, the farm relief provision of the old Bankruptcy Act, was enacted without sufficient study and analysis and that its approach to the problem (incorporation of farmer relief provisions into Chapter 13 is ill-advised. The existing Act does not have sufficient flexibility to meet the needs of farmer relief. Moreover, the farmer relief provisions should contain a "sunset" provision, causing the legislation to expire by its own terms after the farmer emergency situation passes.

Section 75 was enacted in 1933 and was not repealed by the Chandler Act of 1938, ch. 575, 52 Stat. 840 (1980). Rather, Section 75 was maintained in force until March, 1949, and was not made a permanent part of the Bankruptcy Act. 10 H. Remington, *A Treatise on the Bankruptcy Law* § 4002 (1947). The report of the House Committee on the Judiciary No. 1127, February 15, 1944, provides a historical discussion and commentary on the subject of the temporary nature of Section 75. Similarly, this writer believes that the unique problems of farmers cause a need for bankruptcy provisions different than Chapters 11 and 13 of the Bankruptcy Code, and for this reason, a separate chapter is needed for farmers. Since the proposed family farmer legislation attempts to rectify what may be only a temporary emergency situation, there appears to be good reason to have the proposed bills expire at some point in the future after the present emegency ends, unless extended by Congress in the future.

Mr. DENTON. Mr. President, I am pleased that the conference report on H.R. 5316, the Bankruptcy Judges and United States Trustees Act of 1986, maintains a provision which I introduced (originally as S. 1889) which amends the Bankruptcy Code to prevent the discharge of administratively ordered support obligations. The provision would amend the bankruptcy amendments contained in Public Law 98-353, and would fill a gap that currently permits discharge of certain spouse and child support debts through a bankruptcy declaration.

Mr. President, we enacted the Bankruptcy Amendments and Federal Judgeship Act, Public Law 98-353, in 1984. Section 454(b) of the act clarifies section 523(a)(5) of title 11, United States Code, to eliminate loopholes that formerly had allowed the discharge of spousal or child support debts through a judgment of bankruptcy.

Before the enactment of Public Law 98-353, only support debts created in separations, divorce decrees, or property settlements were protected from discharge by bankruptcy. The bankruptcy amendment extended the protection to debts established in other orders of a court of record, thereby preventing discharge in cases where a marriage has never taken place, (e.g. support awarded as a result of a court paternity determination).

Through inadvertence, however, the bankruptcy amendment did not contain a provision to protect support obligations established in State administrative proceedings.

Administrative proceedings are used by approximately 16 States to determine paternity suits and establish and enforce support obligations. Administrative proceedings have proved to be an effective and efficient procedure

for resolving those disputes. It would be unfortunate if we were to prevent the States from using these procedures by denying protection from discharge by bankruptcy for administrative support judgments.

The efficient adjudication of paternity and support suits, and the enforcement of legally established support judgments, are or crucial importance to the economic health of our Nation. This provision was drawn to protect State administrative support judgments from discharge by bankruptcy, and thereby to encourage the States to resolve those suits as quickly as possible through efficient administrative forums.

In reviewing the provision, the House and Senate Conferees agreed to certain technical changes that do not restrict coverage in any way but rather ensure that support determinations made in accordance with State or territorial law (by a governmental unit as defined in 11 U.S.C. 101 (24)) are fully encompassed within the statutory language.

Mr. President, this provision will expand the exception to discharge in 11 U.S.C. 523(a)(5) to embrace support determinations involving various types of processes or procedures (e.g. administrative, expedited judicial) and various forms of determinations (e.g. rules, orders). Such determinations may be made by hearing officers or commissioners of agencies, subagencies, departments or courts of counties, municipalities or States—to cite some examples only.

I thank the conferees for supporting this provision and I urge my remaining colleagues to adopt it.

Mr. DECONCINI. Mr. President, I have been an interested and active participant in the development of much of the legislation that is contained in the conference report that is now being presented for final passage. I support the overall package, but I do have reservations about some parts of the package. For the record, I would like to state my position on some aspects of the bill.

Title I of the bill creates 52 new bankruptcy judgeships. I have always been a strong supporter of the needs of the judicial branch and I have had a long, respectful, and satisfactory relationship with the bankruptcy judges of the Nation. I have often felt they have not received the treatment that their position and magnitude of their jobs deserves. By the same token, I was not convinced during the committee process that the caseload and workload of the bankruptcy judges demonstrated a need for more than 50 new bankruptcy judges. I would have supported a number closer to 30. The report that accompanied the Judiciary Committee action on the bankruptcy judgeship bill spells out in greater detail my reasoning and that of the committee. I hope that is the future the judicial conference will review the report and respond in an appropriate manner. With judgeships running more than a quarter of a million dollars a year to maintain, we cannot engage in the luxury of having surplus judges. I urge the judicial conference to limit their judgeship request to those that are essential and to also review existing judicial position to see if they need to be maintained.

Subtitle B of title I, and title II of the bill deal with the extension and expansion of the U.S. Trustee Program. I have been a strong supporter of the U.S. Trustees, and am pleased that the provisions of this bill as they apply to the Trustees came out as they did. I regret, however, that the concept of "opt-out" as contained in the bill as it passed the Senate was not continued in a greater form. The bill provides that 88 of the judicial districts of the country will permanently go into the Trustee Program and that six districts, all located in Alabama and North Carolina, will be in a separate program much as exists presently, for 6 years. I believe that the theories of bankruptcy administration would have been better served had there been an opportunity for more districts to "opt-out" of the Trustee system and to participate in a program where a Bankruptcy Administrator within the judicial branch would have been responsible for bankruptcy case administration. As the bill stands, I don't believe the concepts of bankruptcy estate administration as advanced by the judicial conference will have a full and fair opportunity to prove themselves.

At this point I certainly want to compliment all the personnel of the U.S. Trustee Program for the outstanding job they have done in all district. They have a record of success, but with the added powers and authority contained in this bill, the need will be even greater for the Attorney General to closely monitor the Trustee activities to ensure that abuses of that power do not occur. Finally, I want to compliment the fine staff of various components of the Department of Justice for all their dedication and work on this bill. Names of people who have been especially important in the process incldue the Attorney General; the Deputy, Mr. Burn; Tom Stanton, Vince Lobisco and Barbara O'Conner of the executive office of U.S. trustees; and Jean FitzSimon, John Bolton and Tom Boyd from other sections of the Department of Justice. They are tireless proponents of the program and able technicians whose assistance was most appreciated.

Finally, Mr. President, I want to comment for a moment on section 255 of the bill which creates a new chapter 12 of the bankruptcy code especially designed to accommodate the family farmer. This chapter is in response to the tremendous hardship that has afflicted many segments of the farm community with the large resulting number of bankruptcies. It was concluded that the present structure of the bankruptcy code simply didn't fit the special economic circumstances that attend the family farmer. I was proud to support the original Grassley bill on this subject in the Senate and I do feel that there is some merit in attempting to address the needs of the farmer through a separate chapter to the bankruptcy code. However, I am troubled by some provisions of the new chapter 12 which I fear might inadvertently cause substantial economic dislocation and bring about an unfair result.

I am very worried that the extremely debtor oriented provisions of this chapter may force our farm lender to write off hundreds of millions of dollars of farm debt with no hope of recovering this debt when the farm crisis ends. Can our credit community afford this? Can our rural banks, teetering now, take another hit? Can the Farmer Credit System take yet another significant economic reversal? Is it fair to ask the creditor to absorb the huge losses that can reasonably be expected to result from this bill? Will there be credit available for farmers in the future, or will this bill result in shutdown of credit in the agricultural area?

These are serious and far reaching questions to which I do not have the answer, but I fear we have tilted the pendulum too far in the direction of the financially troubled farmer. The result may well be that domino effect will occur that in the long run will prove detrimental to the farm sector.

The provision of this bill that troubles me the most is the provision that will permit a family farmer to go into bankruptcy, write down the secured debt to the current value of the land, and then begin to pay the creditor based on what amounts to a new mortgage based on the value of the farm. The thought that a person cannot pay their debt and yet may retain their property and only continue payments based on the value of the property as the filing of the bankruptcy is entirely new—and dangerous. Why won't every farmer with a substantially undercollateralized loan against his farm declare bankruptcy?

Let me put the theory into numbers. Let us assume that in the State of Iowa in 1980, a farmer purchased a piece of land for $1.2 million and took out a $1 million mortgage on the property. In the past 6 years, on the average, there has been a 60-percent decrease in land values in Iowa. In rough terms then, the farm purchased for $1.2 million is now worth $500,000. Another way to look at it is that the se-

cured creditor now has a secured loan for $500,000 and an undercollateralized, unsecured loan for $500,000. Now what will happen under this bill? If the farmer declares bankruptcy under the new chapter 12, the farmer will (1) wipe out for all intents and purposes the $500,000 unsecured portion of the loan; (2) the farmer will only have to make payments on the new, depressed value of the farm—$500,000; and (3) the farmer keeps the farm! Why won't any farmer who finds himself in a situation like the above, where the farmer has a large debt service on property that has substantially depreciated, go into bankruptcy? I fear that we have created a legal atmosphere that may well encourage farm bankruptcies and that farmers who can now manage to work things out with their creditors in some satisfactory manner to both will no longer have that incentive to reach mutual agreement.

Figures on the amount of undercollateralized debt are hard to come by but I will throw out just a few by way of example of the potential magnitude of the problem. My best estimate is that about 40 percent of all farm debt held by institutional investors is undercollateralized. In dollar amounts, the figure exceeds $20 billion. Ninety percent of all debt is held by farmers whose debt is less than $1.5 million, the ceiling under this bill for farmers to take advantage of this chapter. In other words, almost all farmers will be eligible for this chapter. The Farm Credit System lists $2.1 billion in substantially undercollateralized debt. Who knows how much debt that is undercollateralized is held by the Farmers Home Administration—clearly a figure in the billions.

Mr. President, I don't want to be a "pollyanna" crying "wolf" needlessly, but it is my most sincere fear that we may regret our actions tonight. The farm title has substantially revised long held doctrines of the bankruptcy code such as the absolute priority rule and the theories of adequate protection. This bill by not including the doctrines embraced by 1111(b) of the bankruptcy code has precluded a creditor from any hope of participating in an upswing in the value of its collateral. In many other ways, our actions tonight are based on the utmost in good intent—but with no real knowledge of the implications. I urge the proponents of this new farm chapter, Senator GRASSLEY and Congressman SYNAR, to monitor the ramifications of this chapter closely and to resolve to redress inequities that may result in a prompt fashion. I greatly admire both of these gentlemen, and I fervently hope that my judgment is misplaced and that their judgment is fully rewarded.

In closing, I want to thank again the distinguished chairman of the Judiciary Committee, Senator THURMOND, and Senator HEFLIN for all their efforts on behalf of this bill. I also congratulate and thank Chairman RODINO on the House side for his yeoman efforts on behalf of this bill. Also in line for great praise for the roles they have played as "think tanks" on behalf of bankruptcy are all the members of the American Bankruptcy Institute and the National Bankruptcy Conference. Time and again we call upon these volunteer organizations for assistance and they respond with donations of their time and talent. Particularly to be commended are individuals such as Harry Dixon, Ken Klee, Rich Levin, Lawrence King, Robert Zinman, and William Perlstein. Finally, I would like to thank Bob Feidler of my staff for his many efforts on this bill and in the bankruptcy area.

Mr. HATCH. Mr. President, I rise in support of the Bankruptcy Judges and United States Trustees Act of 1986 (H.R. 5316). Despite the pessimists and the naysayers, and despite those who predicted that a satisfactory Bankruptcy Act could never meet the different perspectives and perferences of the varying regions of the country, we have developed a sound and solid conference bill. It is good bill. It establishes 52 much needed judgeships. It establishes 21 Federal judicial districts for the bankruptcy courts. It has refined and extended the bankruptcy trusteeship program, setting out in some detail the duties of the U.S. trustees, but also allowing some flexibility to the Attorney General to enlarge upon those duties if the occasion should rise.

This bill also allows a bankruptcy court to take any action on its own, or to make any necessary determination to prevent an abuse of process and to help expedite a case in a proper and justified manner. If necessary, a U.S. trustee can be designated to serve in one other region than his own, and a U.S. trustee can, in an emergency situation, serve as a case trustee after certification by the U.S. trustee that a disinterested person could not be found to fill the position of case trustee. This, helps to expedite matters and serves the interests of justice.

I have already indicated my concern over the precise wording of section 707(b) of the Bankruptcy Code. Several courts, primarily in Ohio, have taken the position that the bankruptcy trustee is technically "a party in interest" and may not bring evidence of abuse to the attention of the court. This was not the result we intended to achieve in the 1984 Bankruptcy Act. As a result of this conference bill, the U.S. trustee will have the opportunity to inform the court of fraud or abuse. This explicit authority will go a long way toward improving the current confusion and clarifying the real intent of the 1984 legislation.

The new provisions for the family farmer will aid in the preservation of the family farm while maintain at the same time the integrity of the bankruptcy system and meeting the needs of bona fide farm creditors. It also enables a family farm in trouble to undergo a reorganization without going under financially. That is for the good of all of us. I commend my colleague Senator GRASSLEY for this efforts in this regard. He has helped to improve a difficult situation for farmers and nonfarmers alike. The electronic case management demonstration project is an interesting means of evaluating by a cost benefit analysis the enormous caseload problem and the effectiveness of electronic case management remedy.

This is a bill that improves the law. It is a bill that improves the system. It is a bill which will assist creditors and debtors alike. I strongly support its passage, and I urge my colleagues to do the same. This will serve the interests of all parties, and by so doing, will serve the interests of the country.

UTAH BANKRUPTCY JUDGE

Mr. President, I commend the chairman of the Judiciary Committee, Senator STROM THURMOND, for his leadership in setting the bankruptcy courts of the United States on a firm constitutional footing. The adoption of the Landmark Bankruptcy Act in 1984 inaugurated a period of renewed commitment to sound judicial administration of our article I insolvency courts. This sound judicial administration, however, is jeopardized in some districts by inadequate resources to meet the needs. Accordingly, I once again commend the chairman for undertaking the important task of reviewing the need for additional judgeships to keep our bankruptcy system working smoothly.

In this connection, I introduced in March 1985 S. 618, a bill to provide for the appointment of an additional bankruptcy judge for the district of Utah. The need for enactment of this measure has been recently confirmed by the Administrative Office of the U.S. Courts which also requested creation of a new Utah bankruptcy judgeship to prevent disruption of the administration of justice in that part of the tenth circuit.

In making that request, the Administrative Office presented some alarming statistics regarding the massive caseload of the bankruptcy court of the State of Utah. Among the most reliable statistics in assessing the caseload of bankruptcy courts is the number of chapter 11 filings. Chapter 11 cases generally require extensive contested court hearings and adversary proceedings, while chapter 7 and 13 proceedings are generally very administrative and handled out of court. In 1981, the first year that applicable

statistics were available, the total number of chapter 11 bankruptcy filings per judgeship in the State of Utah were 139—a figure many times in excess of the national average of 35. By 1985, the number of chapter 11 filings per judge has risen astronomically to 213—a figure still far above the national average of 92 per judge.

When compared with the national average of filings per bankruptcy judgeship in other categories. Utah's Bankruptcy Court must still be considered blatantly overburdened. For instance, the average number of petitions filed per judgeship in the Nation during 1985 was 1,586, while in Utah, the number stood at 1,979.

A clear indication that Utah's two bankruptcy judges are overworked is that they terminate an average of 77 of the complicated chapter 11 cases yearly, while national average for bankruptcy judges is 30—less than half the Utah totals.

This rigorous caseload clearly disrupts the administration of justice in this vital area of law. Utah bankruptcy judges must spend very long hours on the bench. Utah must often rely on visiting judges. And most distressing, Utah citizens and businesses must occasionally endure costly delays in seeking resolution of their claims.

In article L, section 8 of the U.S. Constitution we find that Congress has been empowered to create uniform bankruptcy laws. The efficiency of uniform bankruptcy laws, however, is imperiled when article I bankruptcy courts are presented with enormous caseloads. In fact, when compared with other districts in the tenth circuit. Utah falls even further behind in the acquisition of necessary bankruptcy adjudicatory resources.

Judge Ralph R. Maybey, a former Utah bankruptcy court judge with a national reputation, has often mentioned Utah's troubled position in the tenth circuit. The Utah district, in 1984, was dealing with almost four times the number of chapter 11 filings, more than two times the number of chapter 13 filings, and just under three times the number of adversary filings per judgeship as compared with other districts in the tenth circuit. Mr. Maybey, referring to the previous statistics, said, "Utah's problem is by far the worst of any in the circuit—and I dare say as bad as anywhere."

The Honorable Aldon J. Anderson, former chief judge of the U.S. District Court, district of Utah, prior to his recent resignation, repeatedly requested a third bankruptcy judgeship position in Utah. His pleas became increasingly emphatic as he saw the "trial calendars * * * backlogged approximately 2 years." He affirmed that the delay of appointment has not only been an inconvenience to the two presently overburdened judges, but also, the delay "has worked in justice on litigants."

This situation is certainly worthy of congressional attention. If our court systems are to maintain the respect they require to dispense impartial and efficient justice, they must not fall into the dilemma currently facing the Utah bankruptcy bench. Accordingly, I urge my colleagues to join me in correcting this Utah situation and the same problems that have arisen in other districts that warrant this corrective legislation.

Mr. THURMOND. Mr. President, I would like to comment on one important provision in this conference report. Last May, when the Senate acted on this bill, I voiced my strong support for a provision sponsored by my distinguished colleague from Utah, Senator HATCH, to clarify the ability of the bankruptcy trustee to bring to the attention of the court information relating to substantial abuse of chapter 7 procedures. I am pleased to inform my colleagues that a similar provision is contained in the conference report. This provision explicitly allows the U.S. trustee not only to bring such information to the court's attention, but also to allow the U.S. trustee to move to dismiss the case on the grounds of substantial abuse. Obviously, the panel trustee will also be involved in this process, since he has important access to information concerning fraud and abuse. In order to further facilitate our intent and our goal in this area—protecting the integrity of the process by ensuring that the court receives all relevant information from objective sources—we expect the panel trustee to advise the U.S. trustee of all such pertinent information. The panel trustee would appear on behalf of any motion filed in this regard.

Mr. HATCH. If I might comment on the excellent presentation of the distinguished chairman of the Judiciary Committee, Senator THURMOND, I would like to add that it is our expectation that the Executive Office for U.S. Trustees will take all appropriate steps to facilitate close cooperation between the U.S. trustees and the panel trustees in these matters. This cooperation will thereby ensure the ability of the U.S. trustee to carry out his statutory responsibilities under section 707(b). In other words, Mr. President, this provision will enable the panel trustee and the U.S. trustee to work closely when dealing with any information or evidence relating to fraud or abuse. The conferees anticipate that the Executive Office for U.S. Trustees will issue uniform guidelines to both the U.S. trustees and the panel trustees for identifying cases of substantial abuse. This will serve to ensure the integrity of the bankruptcy system.

Mr. THURMOND. Mr. President, this legislation authorizes creation of 52 new bankruptcy judgeships, a nationwide U.S. Trustee Program and significant reform in the area of farm bankruptcy. After close scrutiny and careful searching we have come to the conclusion that there are simply no new funds available for the 52 judgeships. Accordingly, we are now only authorizing the positions. The appointment of the new judgeships will not be made until funds are made available.

It is my understanding that efforts will be made to fund all 52 positions in a fiscal year 1987 supplemental and in fiscal year 1988 appropriations.

I ask my distinguished colleagues from New Mexico and Florida to be sure to include the funds for this authorization.

Mr. DOMENICI. I fully expect that in preparing the fiscal year 1988 budget resolution for function 750 including the Judiciary, the Senate Budget Committee will include the annualized fiscal year 1987 level including the impact of this bankruptcy authorization.

Mr. CHILES. I join Chairman DOMENICI in doing what we can to ensure a realistic fiscal year 1988 budget providing for the amount necessitated by this authorization.

Mr. THURMOND. I thank my colleagues for their kind assistance in this matter.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

CORRECTION OF TECHNICAL ERRORS IN H. CON. RES. 401

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 401.

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

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 401) to correct technical errors in the enrollment of the bill S. 2069.

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

Mr. BYRD. Mr. President, there is no objection on this side to the immediate consideration of the concurrent resolution.

The Senate proceeded to consider the concurrent resolution.

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

The concurrent resolution was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL BUREAU OF STANDARDS AUTHORIZATION ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 847, H.R. 4354.

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

The assistant legislative clerk read as follows:

A bill (H.R. 4354) to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1987, and for other purposes.

AMENDMENT NO. 3216

Mr. STEVENS. Mr. President, I send to the desk an amendment on behalf of the Senator from Washington [Mr. GORTON].

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. GORTON, proposes an amendment numbered 3216.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "National Bureau of Standards Authorization Act for Fiscal Year 1987".

AUTHORIZATION FOR PROGRAM ACTIVITIES

SEC. 2. (a) There are authorized to be appropriated to the Secretary of Commerce (hereinafter referred to as the "Secretary") for fiscal year 1987, to carry out the activities performed by the National Bureau of Standards, the sums set forth in the following line items:

(1) Measurement Research and Standards, $36,582,000;

(2) Materials Science and Engineering, $21,228,000;

(3) Engineering Measurement and Standards, $35,875,000;

(4) Computer Science and Technology, $7,500,000; and

(5) Research Support Activities, $22,768,000.

(b) Notwithstanding any other provision of this or any other Act—

(1) of the amounts authorized under subsection (a), $1,900,000 is authorized only for steel technology;

(2) of the amount authorized under paragraph (3) of subsection (a), $3,470,000 is authorized only for the Center for Building Technology and $5,402,000 is authorized only for the Center for Fire Research;

(3) of the amount authorized under paragraph (4) of subsection (a), $1,000,000 is authorized only for Computer Security Activities;

(4) of the amount authorized under paragraph (5) of subsection (a), $6,763,000 is authorized only for the Technical Competence Fund; and

(5) of the amount authorized under paragraph (5) of subsection (a), $6,500,000 is authorized only for the design, equipment, and construction of the Cold Neutron Research Facility.

(c)(1) Funds may be transferred among the line items listed in subsection (a) so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in each subsection.

(2) In addition, the Secretary may propose transfers to or from any line item exceeding 10 percent of the amount authorized for that line item in subsection (a); but a full and complete explanation of any such proposed transfer and the reason therefor must be transmitted in writing to the Speaker of the House of Representatives, the President of the Senate, and the appropriate authorizing committees of the House of Representatives and the Senate, and the proposed transfer may be made only when thirty calendar days have passed after the transmission of such written explanation.

(d) The National Bureau of Standards shall seek reimbursements of not less than $500,000 from other Federal agencies to expand its efforts in support of basic scientific research on the atmospheric, climatic, and environmental consequences of nuclear explosions and nuclear exchanges.

OFFICE OF PRODUCTIVITY, TECHNOLOGY, AND INNOVATION

SEC. 3. In addition to the sums authorized by section 2, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $2,248,000 for the activities of the Office of Productivity, Technology, and Innovation.

NATIONAL TECHNICAL INFORMATION SERVICE

SEC. 4. In addition to the sums authorized by sections 2 and 3, there is authorized to be appropriated to the Secretary for fiscal year 1987 the sum of $500,000 for the patent licensing activities of the National Technical Information Service.

AVAILABILITY OF APPROPRIATIONS

SEC. 5. Appropriations made under the authority provided in this Act shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making such appropriations.

FINANCIAL ASSISTANCE TO CURRENT AND PROSPECTIVE EMPLOYEES

SEC. 6. (a) In order to secure the services of the broadest possible range of talent in carrying out the programs of the National Bureau of Standards, the Act of March 3, 1901 (15 U.S.C. 271-278h) is amended by redesignating section 18 as section 19 and by inserting after section 17 the following new section:

"SEC. 18. The Director is authorized to expend up to 1 per centum of the funds appropriated for activities of the National Bureau of Standards in any fiscal year, as the Director may deem desirable, for awards of research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Bureau. The selection of persons to receive such fellowships and assistance shall be made on the basis of ability and of the relevance of the proposed work to the mission and programs of the Bureau.".

(b) The amendments made by subsection (a) shall be effective October 1, 1986.

ASSESSMENT OF EMERGING TECHNOLOGIES REQUIRING RESEARCH IN METROLOGY

SEC. 7. The Board of Assessment of the National Bureau of Standards programs shall include, as part of its annual review, an assessment of emerging technologies which are expected to require research in metrology to keep the Bureau abreast of its mission, including (but not limited to) Process and Quality Control, Technology Transfer, Engineering Databases, High-Performance Composites, Advanced Ceramics, Fiber Optics, Microwave Metrology, Bioprocess Engineering, and Advanced Computing Concepts. Such review shall include estimates of the cost of the required effort, the required staffing level, and the period over which the research will be required.

POST-DOCTORAL FELLOWSHIP PROGRAM

SEC. 8. (a) The Act of March 3, 1901 (15 U.S.C. 271-271h), as amended by section 6 of this Act, is further amended by redesignating section 19 as section 20 and by inserting after section 18 the following new section:

"SEC. 19. The National Bureau of Standards, in conjunction with the National Academy of Sciences, shall establish and conduct a post-doctoral fellowship program which shall be organized and carried out in substantially the same manner as the National Academy of Sciences/National Research Council Post-Doctoral Research Associate Program that was in effect prior to 1986, and which shall include not less than twenty nor more than forty new fellows per fiscal year.".

(b) The amendments made by subsection (a) shall be effective October 1, 1987.

PROCESS AND QUALITY CONTROL AND CALIBRATION PROGRAMS

SEC. 9. (a) The Director of the National Bureau of Standards shall hold discussions with representatives of Federal agencies, including the Department of Defense, the Department of Energy, the National Aeronautics and Space Administration, the Federal Aviation Administration, the National Institutes of Health, the Nuclear Regulatory Commission, and the Federal Communications Commission, which use (or the contractors of which depend on) the process and quality control and calibration programs of the Bureau, and with companies, organizations, and major engineering societies from the private sector, in order to determine the extent of the demand for research and services under such programs, the appropriate methods of paying for research and services under such programs, and the willingness of Federal agencies and the private sector to pay for such research and services.

(b) Within six months after the date of the enactment of this Act, the Director shall submit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report of the Director's findings based on the discussions held under subsections (a), together with recommendations for such legislative actions as may be needed to implement a comprehensive Federal process and quality control and calibration program.

DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT

SEC. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by

the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) the rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph 3)) within which such position has been placed;

(2) the minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) employees shall be evaluated under a performance appraisal system which—

(A) uses peer comparison and ranking wherever appropriate; and

(B) affords appeal rights comparable to those afforded under chapter 43 of title 5, United States Code;

(5)(A) the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances (but shall not be considered a part of basic pay);

(8) there shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) the methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) basic pay;

(B) bonuses;

(C) allowances;

(D) retirement benefits;

(E) health insurance benefits;

(F) life insurance benefits; and

(G) leave benefits.

(2) The Director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) shall include findings as to—

(i) the extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect positions involving the same types and levels of work in the private sector; and

(ii) with respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) the percentage recommended; or

(ii) the overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) to make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) after making up for the entirety of any difference determined under clause (i) (including from any pervious year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) the maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) the amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into acocunt for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginnig on October 12, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) in the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) in the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump-sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) the Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) the Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

Mr. GORTON. Mr. President, I am pleased to bring before the Senate a substitute version of H.R. 4354, the fiscal year 1987 authorization bill for the National Bureau of Standards. The Bureau is one of our most important national laboratories, with the specific mission of serving the needs of U.S. science and industry. The Bureau's development of standards and measurements contributes to compatibility of products and quality control, and the Bureau's research in emerging high-technology fields, such as fiber optics and advanced ceramics, is important to the international competitiveness of U.S. industry.

I am especially pleased that this bill provides for the long-term stability of the Bureau's Center for Fire Research (CFR) and Center for Building Technology (CBT). CFR studies the properties of fire and the dynamics of fire within structures, and develops model for fire safety programs. CBT studies the properties of building materials and structural techniques, and provides technical support for international building standards. Both centers are cost-effective, provide services which are unavailable elsewhere, and make contributions to public safety which cannot be measured in dollars. I hope that my colleagues will join me in supporting adequate funding for the centers.

H.R. 4354 authorizes appropriations for the Bureau and for the Office of Productivity, Technology, and Innovation (OPTI) and the National Technical Information Service of the Department of Commerce. The Senate Commerce Committee's Subcommittee on Science, Technology, and Space, which I chair, held a hearing on funding for the Bureau, OPTI, and NTIS on April 10, 1986. I introduced S. 2664, the companion to H.R. 4354, on July 21, 1986. S. 2664 was ordered reported without objection by the Commerce Committee and was reported on August 13, 1986. The House passed H.R. 4354 on August 12, 1986.

This substitute bill is the result of negotiations between the Senate Commerce Committee and the House Science and Technology Committee. I intend for this bill to be the final fiscal year 1987 authorization bill for these agencies and also to guide the allocation of funds provided in the continuing resolution. The bill tracks the aggregate funding levels provided by the Senate Appropriations Committee, and I have asked the committee to use the specific levels in this bill as the Senate's position in conference on the continuing resolution.

Mr. President, this bill resolves a conflict between the legislative and executive branches of Government overspending priorities for the National Bureau of Standards. The administration has sought funding for development of a cold neutron research facility at the Bureau, and has proposed to offset the cold neutron initiative by eliminating the Center for Fire Research and Center for Building Technology and by reducing by half funding for the Bureau's Institute for Computer Science and Technology (ICST). The Congress has a high regard for the value of the fire and building centers and ICST, and has rejected the proposed cuts; consequently, no funding has been provided for the cold neutron research facility, which has unquestioned scientific value.

I was disappointed when the fiscal year 1987 budget submission for the Bureau included, for the second straight year, proposals to eliminate the centers and cut ICST to offset the proposed cold neutron initiative. I indicated to the administration that the cold neutron research facility would not be funded as long as the administration proposed these cuts, and I introduced S. 2664 in a form which restored funding for the fire and building centers and ICST and prohibited expenditures for cold neutron. Concurrently, I negotiated with the administration in an effort to find a mutually acceptable Bureau budget.

This substitute bill reflects an agreement which, subject to the approval of Congress, will provide for development of the cold neutron research facility without eliminating the fire and building centers or making a 50-percent cut to ICST. The bill includes small cuts to the two centers and to ICST, reductions to the Bureau's Postdoctoral Research Associate Program and Technical Competence Fund, and an authorization of $6.5 million for the cold neutron research facility. The total authorization for the Bureau is $123,953,000, which is the level contained in the Senate Commerce, Justice, State appropriations bill and the Senate Continuing Resolution.

If the Congress approves this budget for the Bureau, the administration has agreed not to propose further cuts to the centers and ICST in fiscal years 1988 or 1989. This agreement is acceptable to the Senate and House authorizing committees and to the leadership of the Senate Appropriations Subcommittee on Commerce, Justice, and State. I urge my colleagues to approve this agreement by passing this bill and providing adequate funding for these important Bureau programs, and I ask unanimous consent that a letter from the Office of Management and Budget describing the details of the agreement be entered into the RECORD at this point.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC.

HON. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: This is to confirm recent staff discussions on the National Bureau of Standards (NBS) authorization and appropriation bills.

The Office of Management and Budget (OMB) and the Department of Commerce will support a total NBS budget authorization of $123,953,000 for FY 1987. This level will include $6.5 Million for initiation of the Cold Neutron Facility and reductions from the pre-Gramm-Rudman-Hollings FY 1986 operating levels of $.5 Million for the Fire Program, $.5 Million for the Building Program and $2.5 Million for Computer Sciences and Technology. There will also be reductions of $1.5 Million in the Competence Program and $1.641 Million in the Post Doctoral Program. Neither the Department of Commerce nor OMB will propose further programmatic reductions in the Fire, Building, and Computer Sciences Programs in FY 1987, FY 1988 or FY 1989. In the case of across-the-board budget changes such as reductions the President must make to achieve Gramm-Rudman-Hollings deficit targets or a subsequent sequester, these programs will be treated the same as the other NBS programs.

Our commitment is, of course, contingent on successful implementation of this compromise in both the final authorization and appropriation for NBS in FY 1987.

Sincerely,

CAROL T. CRAWFORD,
Associate Director for Economics and Government.

Mr. GORTON. Mr. President, this bill also provides an authorization of $2,748,000 for OPTI, of which $500,000 is earmarked for the patent licensing activities of OPTI's National Technical Information Service. This funding level for OPTI is consistent with the continuing resolution and sufficient to maintain current OPTI services in fiscal year 1987.

The bill includes a significant provision passed by the House which was not part of S. 2664, the Senate companion. The provision—section 10 in the substitute bill—creates a National Bureau of Standards demonstration project relating to personnel compensation and management.

The demonstration project enhances the Bureau's ability to recruit and retain capable employees by giving the Bureau flexibility in setting salaries competitive with those available outside the Government and in adjusting compensation on the basis of merit. The project addresses the Government's problem attracting and keeping qualified personnel, especially in high-technology fields.

Successful experiments with alternate personnel compensation systems, notably the Navy's demonstration project at the China Lake Laboratory, have led to an administration proposal to implement a permanent, Government-wide personnel policy based on pay band flexibility and adjustment based on performance. The Governmental Affairs Committee has not considered the administration's proposal, and I understand that the committee believes that further experimentation is needed before a Government-wide policy can be considered. The Governmental Affairs Committee supports the demonstration project at the Bureau created by this bill.

Mr. President, I urge my colleagues to support this bill and send it back to the House for final passage.

Mr. HOLLINGS. Mr. President, the Senate is now considering a compromise proposal regarding the National Bureau of Standards [NBS]. I support the compromise, although not without some reservations.

This compromise reflects not only an agreement between the Senate and the House but also an agreement between the Congress and the Office of Management and Budget. For several years, OMB has proposed eliminating the fire and building centers at the Bureau and cutting its computer institute in half. For as many years, Congress has categorically rejected these proposals. OMB has never offered one shread of hard evidence to show that private industry or the States could or would assume the vital services performed by these NBS groups.

This year we have a compromise. In return for three congressional concessions—accepting small cuts in these three programs, accepting additional cuts in two NBS support programs, and allowing the so-called cold neutron facility to proceed—OMB has agreed in writing not to propose further reductions in the three programs in future Reagan administration budget requests.

I do not like the idea of further cuts in the fire, building, and computer programs. I particularly worry about the Center for Fire Research. It remains the premier American center for developing flame-resistant materials and improved safety systems. Given that the United States still has the highest fire death rate in the industrialized world, it would be negligent in the extreme to eliminate this center. I am reluctant to support even modest additional cuts in its funding.

I will support the proposed compromise, however. I believe that the morale and effectiveness of the fire, building, and computer programs will improve sharply if we can remove the threat of further cuts. OMB has made that commitment. In my mind, the benefits of the agreement narrowly outweigh the disadvantages. For that reason, I support the agreement and urge my colleagues to so, as well.

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

The amendment (No. 3216) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that Calendar No. 836, which is S. 2664, the Senate companion bill, be indefinitely postponed.

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

The bill is open to further amendment. If there be no further amendments, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time, and passed.

Mr. STEVENS. 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.

AUTHORIZATION FOR CONSERVATION PROGRAMS ON MILITARY RESERVATIONS AND PUBLIC LANDS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 201, S. 1352.

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

The assistant legislative clerk read as follows:

A bill (S. 1352) to authorize appropriations to carry out conservation programs on military reservations and public lands during the fiscal years 1986, 1987, and 1988.

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

There being no objection the Senate proceeded to consider the bill.

AMENDMENT NO. 3217

Mr. STEVENS. Mr. President, I send to the desk an amendment on behalf of Senators CHAFEE, STAFFORD, and MITCHELL.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. CHAFEE, Mr. STAFFORD, and Mr. MITCHELL, proposes an amendment numbered 3217.

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

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

The amendment is as follows:

On page 2, after line 4 insert the following:

SEC. 2. NATURAL RESOURCES AND FISH AND WILDLIFE MANAGEMENT ON MILITARY RESERVATIONS; REPORT ON MILITARY EXPENDITURES FOR FISH AND WILDLIFE MANAGEMENT.

(a) NATURAL RESOURCES MANAGEMENT.—The Secretary of each military department shall manage the natural resources of each military reservation within the United States that is under the jurisdiction of the Secretary—

(1) so as to provide for sustained multipurpose uses of those resources; and

(2) to provide the public access that is necessary or appropriate for those uses;

to the extent that those uses and that access are not inconsistent with the military mission of the reservation.

(b) FISH AND WILDLIFE MANAGEMENT SERVICES.—The Secretary of each military department shall ensure, to the extent feasible, that the services necessary for the development, implementation, and enforcement of fish and wildlife management on each military reservation within the United States under the jurisdiction of the Secretary are provided by the Department of Defense personnel who have professional training in those services.

(c) FISH AND WILDLIFE MANAGEMENT REPORT.—The Secretary of each military department shall submit to each House of the Congress, before the close of the 180-day period occurring after the close of fiscal year 1986, a detailed report setting forth the amount and purpose of all expenditures made during fiscal year 1986 for fish and wildlife management on each military reservation in the United States under the jurisdiction of the Secretary.

(d) DEFINITIONS.—As used in this section—

(1) The term "military department" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(2) The term "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possession of Puerto Rico, and the territories and possession of the United States.

SEC. 3. SIKES ACT AMENDMENTS.

(1) COOPERATIVE PLANS.—(1) Section 101 of the Act of September 15, 1960 (commonly referred to as the "Sikes Act"; 16 U.S.C. 670a) is amended to read as follows:

"SEC. 101. (a) The Secretary of Defense is authorized to carry out a program of planning for, and the development, maintenance, and coordination of, wildlife, fish, and game conservation and rehabilitation in each military reservation in accordance with a cooperative plan mutually agreed upon by

the Secretary of Defense, the Secretary of Interior, and the appropriate State agency designated by the State in which the reservation is located.

"(b) Each cooperative plan entered into under subsection (a)—

"(1) shall provide for—

"(A) fish and wildlife habitat improvements or modifications,

"(B) range rehabilitation where necessary for support of wildlife,

"(C) control of off-road vehicle traffic, and

"(D) specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered;

"(2) must be reviewed as to operation and effect by the parties thereto on a regular basis, but not less often than every 5 years;

"(3) shall, if a multiuse natural resources management plan is applicable to the military reservation, be treated as the exclusive component of that management plan with respect to wildlife, fish, and game conservation and rehabilitation; and

"(4) may stipulate the issuance of special State hunting and fishing permits to individuals and require payment of nominal fees therefor, which fees shall be utilized for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities in accordance with the cooperative plan; except that—

"(A) the Commanding Officer of the reservation or persons designated by that Officer are authorized to enforce such special hunting and fishing permits and to collect the fees therefor, acting as agent or agents for the State if the cooperative plan so provides, and

"(B) the fees collected under this paragraph may not be expended with respect to other than the military reservation on which collected.

"(c) After a cooperative plan is agreed to under subsection (a)—

"(1) no sale of land, or forest products from land, that is within a military reservation covered by that plan may be made under section 2665 (a) or (b) of title 10, United States Code; and

"(2) no leasing of land that is within the reservation may be made under section 2667 of such title 10;

unless the effects of that sale or leasing are compatible with the purpose of the plan.

"(d) With regard to the implementation and enforcement of cooperative plans agreed to under subsection (a)—

"(1) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and

"(2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife.

"(e) Cooperative plans agreed to under the authority of this section and section 102 shall not be deemed to be, nor treated as, cooperative agreements to which the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) applies.".

(2) Subsection (d)(1) of such section 101 (as added by paragraph (1)) shall not affect any contract entered into before the date of the enactment of this Act for the provision of services to implement or enforce a cooperative plan under this Act on any military installation; but shall apply to the renewal, after such date of enactment, or any such contract.

(b) FUNDS COLLECTED UNDER PLANS.—Subsection (a) of section 106 of the Sikes Act (16 U.S.C. 670f(a)) is amended by adding at the end thereof the following new sentence: "All funds that are so collected shall remain available until expended.".

SEC. 4. FOREST PRODUCTS ON MILITARY RESERVATIONS.

Section 2665 of title 10, United States Code, is amended as follows:

(1) Subsection (d) is amended—

(A) by striking out "available for operation and maintenance during a fiscal year";

(B) by striking out "expenses" and inserting in lieu thereof "costs"; and

(C) by striking out "during such fiscal year".

(2) Subsection (e)(1) is amended by striking out "for all expenses of production of forest products".

(3) Subsection (f) is amended—

(A) by striking out "expenses" in the matter preceding subparagraph (A) in paragraph (1) and inserting in lieu thereof "costs",

(B) by amending paragraph (1)(C) to read as follows:

"(C) for natural resources management that implements approved plans and agreements.", and

(C) by amending paragraphs (2) and (3) to read as follows:

"(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

"(A) reimbursements of appropriations made under subsection (d), and

"(B) payments made to States under subsection (e).

"(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.".

Amend the title so as to read: "A bill to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes".

Mr. CHAFEE. Mr. President, this amendment to S. 1352 on behalf of Senators STAFFORD, MITCHELL, and myself, will enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations. Mr. President, this amendment combines legislation, H.R. 1202, passed by the House with changes recommended by the Senate Armed Services Committee. And I understand that it has the support of that committee and the Merchant Marine and Fisheries Committee of the House of Representatives.

Mr. President, in April 1984, the U.S. Army invited a three-member review team to assess the status of natural resource management programs carried out on U.S. Army lands and to formulate recommendations for improving these programs. Many of these recommended changes, which involve improved planning and coordination for multipurpose use, have been incorporated into this amendment.

The Environment and Public Works Committee's Subcommittee on Environmental Pollution conducted a hearing on September 17, 1986, to examine the issues raised by the House bill and the changes recommended by the Senate Armed Services Committee. One issue addressed at that hearing was the effect implementation of the Office of Management and Budget [OMB] Circular A-76 has had on fish and wildlife conservation activities on military lands under the Sikes Act. The OMB circular, first issued in 1955, was revised in August 1983, and again in March 1984. The circular is intended to provide for review of Federal activities and to promote private sector contracting for these activities where feasible.

Testimony was submitted at the hearing that many fish and wildlife conservation-related activities were being contracted out. While no specific problems with contracting activities were identified at the hearing, we are concerned that contracting out of fish and wildlife activities based upon fiscal consideration alone may not be in the best interest of the conservation resource. While certain labor-intensive activities can be performed effectively by the private sector, fish and wildlife management and policy-related activities are inherently governmental responsibilities which we believe are best handled by qualified individuals within the Department of Defense, the Department of the Interior, or appropriate State agencies. Our amendment would ensure that this would be the case.

Testimony during the hearing revealed that, on some military bases, the fish and wildlife cooperative plans, once completed, are not updated or periodically reviewed with sufficient frequency. Additionally, the impacts of forestry and agricultural activities on fish and wildlife need are not always considered in a comprehensive fashion. Consequently, our amendment would make these cooperative plans the governing component for the management of fish and wildlife in the overall base multiuse natural resource management plans. Further, the amendment would require the fish and wildlife plan to be reviewed on a regular basis to assure that it is up to date and is addressing current needs.

In the Military Construction Authorization Act of 1985, Congress created a timber reserve account, which is to be administered by the Secretary of Defense, to be used for improvements on forest lands. One-half of the total amount of money collected from the sale of timber products, minus reimbursement for forestry expenses and State revenue sharing, is deposited into the timber reserve account. At no time is this account permitted to exceed $4 million.

However, a strong relationship exists between forest-land uses on military reservations and the multiple use management of these lands for all natural resources purposes, including fish and wildlife management. Effective planning and coordination on these lands is one of the fundamental objectives of the Sikes Act and any improvements to forest lands should also give consideration to other aspects of natural resource management. Our amendment, then, would allow this reserve account to be used not only for forest management but also for conservation of fish and wildlife and other natural resources.

Mr. President, let me describe our amendment in more detail for my colleagues. Section 2 would require that the Secretary of each military department, including the Army, Navy, and Air Force, to manage the natural resources of each military reservation under his jurisdiction within the United States for sustained multiple use. No one disputes that the military mission must be of paramount importance of these reservations, however, the lands are held as a public trust and should be managed on a multiple use basis when compatible with military purposes. Public access appropriate and necessary for those multiple uses also is provided, to the extent that such access is consistent with the military mission of the reservation.

Section 2 also would mandate that the development, implementation, and enforcement of fish and wildlife management activities on U.S. military reservations be provided by Department of Defense personnel with professional training in those activities. This provision is intended to insure that fish and wildlife management on military lands is recognized as a legitimate, in-house responsibility of the Department of Defense and that management activities in this regard are carried out by professional, fish and wildlife management-trained personnel.

Lastly, section 2 would require the Secretary of each military department to prepare and submit to Congress a detailed report of all fish and wildlife management related expenditures on U.S. military reservations under the jurisdiction of that military department. This report should be submitted to the Committees on Armed Services and on Environment and Public Works of the Senate and on Merchant Marine and Fisheries and on Armed Services of the House of Representatives. This report must be submitted within 180 days after the close of fiscal year 1986.

Section 3(a)(1) would continue to authorize the development and implementation of fish and wildlife conservation plans cooperatively agreed to by the Secretaries of Defense and the Interior and the appropriate State fish and wildlife agency. This section would require that these plans be reviewed by the participating parties at least every 5 years. The cooperative fish and wildlife plan under the amendment would be treated as the exclusive component of that plan for managing wildlife, fish and game conservation and rehabilitation in the development and review of multiuse natural resource management plans for the appropriate military reservation. This provision is intended to ensure that the goals and objectives of the fish and wildlife management plan receive adequate consideration in relation to timber harvest, agriculture, and other natural resource uses on military lands. In no way does this language prohibit or require the termination of existing fish and wildlife enhancement, management, or restoration that is being done on military reservations though not identified in the fish and wildlife cooperative plan. This section also clarifies that the proceeds from fees for special State hunting and fishing permits for military lands may only be expended at the military reservation on which the fees were collected.

Section 3(a)(1) further requires that, after the parties have agreed to a cooperative fish and wildlife plan, no sale or leasing of land or sale of forest products from land within a military reservation covered by the cooperative plan is permitted unless the effects of the sale or leasing are compatible with the purposes of the cooperative plan. This provision is intended to ensure that natural resource management on military lands is truly multiuse and that fish and wildlife resources receive equal consideration with other resource uses.

Section 3(a)(1) exempts activities and services associated with implementation and enforcement of cooperative fish and wildlife plans from provisions of Circular A-76 of the Office of Management and Budget or any successor circular. This is not intended to restrict the authority of the Department of Defense to enter into contracts for these services, but only to obviate the need for mandatory review and contracting under this circular or any successor directive. In the event that the Department of Defense elects to provide these services through contract, the U.S. Fish and Wildlife Service or the appropriate State fish and wildlife agency should receive priority consideration for award of these contracts.

Section 3(a)(2) clarifies that any existing contract for services to implement or enforce provisions pursuant to a cooperative agreement is not affected by the exemption from provisions of OMB Circular A-76 for the duration of such contract. However, new contracts or renewals of existing contracts are, after the date of enactment, subject to this exemption provision.

Section 3(b) amends the Sikes Act to provide that any funds collected in accordance with the cooperative plans shall remain available until expended. This provision would allow installations to accumulate funds from year to year for use on larger projects at the installation. This is intended to streamline administrative and accounting procedures to facilitate use of these funds during years other than the year the funds were collected.

Section 4 amends provisions of the Military code (10 U.S.C. 2665) relating to reimbursement for all costs of production of forest products. Under existing law, proceeds from the sale of forest products harvested on lands under the jurisdiction of the Secretary may be used to reimburse expenses for production costs associated with those timber products. There has been some question as to whether only operations and maintenance expenses could be reimbursed from receipts of the commercial forestry program or whether all costs associated with operating that program could be reimbursed. This provision of the amendment, then, clarifies the authority of the Department of Defense to use receipts of the commercial forestry program to fund all costs of operating that program.

Our amendment will allow some portion of the total receipts available in the commercial forestry reserve account (approximately $1.2 million) to be used for fish and wildlife programs on military reservations. There are more than sufficient funds for this purpose. Annual expenditures from this account have never approached the maximum available. The Department of Defense should ensure that no escalation of equipment and other purchases takes place which would deplete the reserve account and prevent adequate funding for fish and wildlife management.

Section 4 also amends the military code (10 U.S.C. 2665(f)) relating to a reserve account maintained by the Treasury for specified uses related to forest lands under the jurisdiction of the Secretary of Defense. Under current law, after reimbursement for production costs, 40 percent of the balance for each installation is allocated to the State in which the facility is located. The remaining balance is divided equally between the General Treasury and the reserve account mentioned above. The reserve account is available to the Secretary for improvement of forest lands on military installations to meet unexpected contingencies in forest administration on these lands for which other funds are not available, and to provide continuity of production from one fiscal year to the next.

Our amendment would expend the purposes of the reserve account to allow it to be used for natural re-

sources management activities which implement approved plans and agreements. Thus, fish and wildlife conservation programs pursuant to the Sikes Act cooperative plans would be eligible for funding from the reserve account. Forestry activities on military lands result in significant impacts on fish and wildlife resources and, therefore, efforts to restore these resources pursuant to a cooperative plan should be eligible for funding from the reserve account.

Additionally, section 4 would stipulate that all funds from the sale of forest products which are available after payment to the States and from reimbursement of costs of production are to be deposited into the reserve account, rather than one-half of these funds as under current law. Finally, the reserve account would not be allowed to exceed $4 million on December 31 of any calendar year. Any balance in excess of this amount on this date would be required to be deposited in the General Treasury. Under existing law, the reserve fund may not exceed $4 million at any time.

Thank you, Mr. President.

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

The amendment (No. 3217) was agreed to.

Mr. CHAFEE. Mr. President, S. 1352 authorizes appropriations to carry out conservation programs on military reservations and public lands under the Sikes Act during fiscal years 1986, 1987, and 1988. The Sikes Act was enacted by Congress in 1960 and amended in 1968, 1974, 1978, and 1982. The act originally authorized the Secretary of Defense to carry out a program of planning, development, maintenance, and coordination of fish and wildlife conservation on military reservations. These installations encompass over 25 million acres. The programs were to be in accordance with a cooperative plan mutually agreed upon by the Secretary of the Defense, the Secretary of the Interior, and the appropriate agency in the State in which the installation is located. Department of Defense regulations require that fish and wildlife management plans be executed for all military installations which contain land and water areas suitable for the conservation and management of fish and wildlife resources. Suitability is determined after consultation with the U.S. Fish and Wildlife Service and the director of the State fish and wildlife agency in which the installation is located. To date, more than 19 million acres of fish and wildlife habitat have been covered by these cooperative plans.

In 1968, Congress amended the Sikes Act to include public outdoor recreation programs on military reservations and, for the first time, authorized appropriations to the Secretaries of Defense and Interior to carry out the purposes of the act.

In 1974, Congress amended the act to require that the cooperative wildlife plans provide for fish and wildlife habitat management, range rehabilitation, and the control of off-road vehicle traffic.

These 1974 amendments also established title II of the act, which directed the Secretaries of the Interior and Agriculture, in cooperation with the appropriate State agencies, to plan, develop, maintain, and coordinate programs for the conservation and rehabilitation of lands under their jurisdiction (Bureau of Land Management and Forest Service lands) and lands under the jurisdiction of the Atomic Energy Commission [AEC], now the Department of Energy, and the National Aeronautics and Space Administration [NASA].

Title II of the Sikes Act also provides that any State agency may agree with the Secretaries of the Interior and Agriculture that no individual will be permitted to hunt, trap, or fish on any Interior or Agriculture lands covered by the act unless the individual possesses a valid public land management area stamp. This stamp would be in addition to regular State hunting, fishing, and trapping permit or licenses. Any fees collected from the sale of this stamp must be utilized solely to carry out conservation and rehabilitation programs on the lands subject to the agreement and to defray the expenses associated with printing and issuing the stamp.

In 1978, Congress reauthorized the Sikes Act, raising the authorization level under title I from $2 million to $3 million for the Secretary of the Interior and, under title II, increasing the authorization for the Secretary of Agriculture from $10 million to $12 million. The Secretary of Defense's authorization of $1.5 million under title I and the Secretary of the Interior's authorization of $10 million under title II remained constant.

In 1982, Congress once again amended the Sikes Act by extending the authorization levels through 1985. Titles I and II were amended to provide adequate protection for endangered or threatened species of fish, wildlife, and plants. The nature of the cooperative agreements referred to in the Sikes Act was clarified by noting that these documents are the vehicle through which the Federal and State agencies mutually agree in principle on fish and wildlife programs rather than the legal instruments defined under the Federal Grant and Cooperative Agreement Act. In addition, title II was amended to allow the Secretary of Agriculture to make purchases and contracts for property and services from, and provide assistance to, the State agencies without going through the advertising and competitive bidding requirements under the Federal Property and Administrative Services Act.

As reported by the Committee on Environment and Public Works on June 25, 1985, S. 1352 extends the existing authorization levels for each of fiscal years 1986, 1987, and 1988. These authorization levels are $1.5 million annually to the Secretary of Defense and $3 million annually to the Secretary of the Interior to carry out the purposes of the Sikes Act on military lands. Also authorized are $10 million annually to the Secretary of the Interior and $12 million annually to the Secretary of Agriculture to carry out the purposes of the Sikes Act on other public lands, including U.S. Forest Service, Bureau of Land Management, National Aeronautics and Space Administration, and Department of Energy lands.

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.

Mr. STEVENS. 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.

□ 1910

REHABILITATION ACT AMENDMENTS—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on H.R. 4021 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment to the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973 having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1986.)

Mr. WEICKER. Mr. President, I rise to urge the passage of the conference report on H.R. 4021, the Rehabilitation Act Amendments of 1986.

The agreement reached by the conferees on this legislation both ensures that the programs currently author-

ized by the Rehabilitation Act will continue to serve the Nation's disabled individuals, and makes significant improvements to the act to reflect the state of the art with respect to the provision of vocational rehabilitation services.

An important component of the Senate bill, which I am pleased that the House accepted in its entirety, authorizes grants for States to develop supported employment services for severely disabled individuals. We know that severely disabled individuals can work, given appropriate support. The new supported employment program authorized in this bill will require State agencies to develop supported employment services in order to expand existing rehabilitation services to many severely disabled individuals who have been underserved or unserved by these agencies. States will be expected to organize their supported employment services in a flexible manner, in order to respond to the individual needs of persons eligible for services under this program. While the bill calls for traditionally time-limited postemployment services under the supported employment program, I want to make it clear that it is the individual needs of clients that should guide the delivery of services, and any arbitrary time limitations placed on these services are inappropriate.

Another provision contained in the Senate bill and adopted by the conferees relates to the intent of Congress concerning violations of section 504 and other Federal statutes prohibiting discrimination. The conference agreement provides that States shall not be immune under the 11th amendment from suit in Federal court for violations of section 504 and other statutes. This provision will ensure that individuals will be able to enforce their rights in Federal court when State or State agency actions are at issue.

The Rehabilitation Act amendments also include an increased emphasis on rehabilitation engineering as it relates to employment, an increased role for the National Council on the Handicapped as a policy advisory body on issues of national scope affecting disabled individuals, and important refinements in projects with industry and independent living programs.

The Federal Government has long recognized its responsibility to assist disabled citizens live independently as tax-paying citizens. I believe the Rehabilitation Act Amendments of 1986 represent a significant contribution toward the realization of that goal. In these times of fiscal constraint, the investment in the future of disabled individuals through rehabilitation programs is one of the most prudent investments we make—with an $11 return to the economy for every dollar spent.

Further, I am particularly pleased that the conferees have addressed the issue of how to calculate the entitlement amount under the basic State grant. An amendment included by the conferees to the authorization of funds for the State grant provision will ensure that the State grant program will be guaranteed, at the very least, a cost-of-living increase over the previous year's funding level. This is essential when we know there are waiting lists in virtually every State for rehabilitation services, and that on average, only 1 in 20 eligible individuals are currently getting the services they need.

Finally, I want to thank all the conferees on the Senate side for their perseverance in arriving at the agreement—which was unanimously adopted by all conferees—and also Representatives WILLIAMS, HAWKINS, and JEFFORDS on the House side for their support of the final conference agreement on this important legislation.

Mr. STAFFORD. Mr. President, I rise to give my support to the conference report on the Rehabilitation Act Amendments of 1986. This represents the most far-reaching and encompassing legislation in this area since Congress passed the 1978 Rehabilitation Act Amendments. Not one portion of this act was left untouched and the conference agreement reauthorizes it for another 5 years. These changes reflect state of the art as well as the changes technology and medicine have made in the lives of the disabled individuals of this Nation.

There are several portions of this conference agreement that I would like to note. First is the reaffirmation of our commitment to, and the value of, the basic State grant program for the provision of rehabilitation services. The basic State grant program has been the foundation of this act and has been in existence for over 65 years. Millions of handicapped individuals have received the services they needed in order to become a part of this Nation's workforce. For each person that is rehabilitated, the cost of services received is paid back to the Federal Government within 4 years from the income taxes paid by the disabled person. More than any other social services program, the basic State grant program provides us with an investment in America's future, by providing this country with trained, well qualified handicapped workers.

Second, the conference agreement requires the Director of the National Institute on Disability and Rehabilitation Research to conduct a study of health insurance practices and policies affecting disabled persons. To many of these in this Chamber this is an insignificant portion of the legislation. However, the majority of this Nation's disabled individuals are unable to attain health insurance due to the fact that their pre-existing medical condition prohibits it. This inability to obtain health insurance acts as a disincentive to becoming employed. I personally look forward to reviewing the results of this study when it comes to us.

Third, the conference agreement places an emphasis on the need for rehabilitation engineering services. These types of services assist disabled individuals to become more independent by utilizing the devices and modifications made for their home and work environments.

Fourth, the new supported employment State grant program both emphases and reenforces the concept that individuals with the most severe handicaps can be trained and are therefore able to compete in the work force. This concept is not a new one. Supported employment training programs have existed for many years in Vermont and my State has the distinction of being only one of two States which has a documented 5-year track record in providing these types of services. During this time period over 180 severe handicapped Vermonters have received training and have been placed in the competitive labor market. I am proud to say that this program enjoys an 85-percent success rate. In order for this program to be successful, Vermont utilizes the cooperation of many of the State agencies from vocational rehabilitation to mental health, special education and developmental disabilities. Just recently, the Vermont Department of Employment and Training contributed $60,000 to establish the newest supported employment project. Cooperation of this type is what has made this program such a success in Vermont and is an example I hope other States will follow.

Finally, I would like to comment on title VII of the act which authorizes independent living services. Since its inception in 1978, the independent living program has had a dramatic impact on the lives of disabled individuals, many of whom manage the part B program—Centers for Independent Living. The conference agreement requires that each independent living center have a board which is composed of a majority of handicapped individuals, requires the evaluation of independent living centers based on standards and provides for the establishment of new centers. The two centers in Vermont provide a variety of needed serices to all physically and mentally handicapped individuals and these new provisions will assist them in maintaining their continuity.

In 1921 the original legislation establishing the rehabilitation program was enacted. It received strong bipartisan support then and continues to do so today. I urge my colleagues to join in

giving their support to this very important piece of legislation.

Mr. HATCH. Mr. President, I am pleased to speak in support of the conference agreement on the Rehabilitation Act Amendments of 1986. This act, as conferenced with the House, incorporated virtually all of the provisions that were unanimously passed by the Senate on September 8, 1986.

This legislation demonstrates again the fine commitment to handicapped programs by my friend and colleague Senator WEICKER, chairman of the Senate Subcommittee on the Handicapped. I am pleased to join his leadership in helping over 35 million citizens in our country who are disabled. This bill strengthens America's rehabilitation programs while modifying them only where appropriate to better meet the vocational needs of individuals with handicaps.

The most significant new program in the act is the supported employment provisions designed to provide vocational assistance to many seriously handicapped individuals who have not been considered employable under other rehabilitation provisions. This program will go a long way toward assisting seriously handicapped individuals achieve independence through employment opportunities.

We have also strengthened the State commitment to these programs by increasing the State match for excess contributions. The intent is not to penalize States, like my own, that are having economic and financial difficulties. This provision will only apply to future increases in the Federal portion of the rehabilitation program. The advantage of this provision is that it will add money to the rehabilitation pool of funds, thus permitting more people to be served.

Further, the conference agreement rejects the provision to move the appointment and responsibility of the Commissioners of RSA and NIHR under the Secretary of Education. This provision would have diminished the status of these two important positions and take them out from under senatorial confirmation.

In the bill, the National Institute on Handicapped Research has been renamed the National Institute on Disability and Rehabilitation Research. This National Institute is a premier institute and is very important to the overall research efforts to improve services to handicapped individuals. Within this context, I am particularly pleased to report that the Senate provision providing for the accessibility of electronic equipment for handicapped individuals was accepted in the conference agreement. The guidelines to be developed will help ensure that new electronic technology will be designed to be accessible to handicapped individuals.

Another very important provision is the demonstration program to provide incentives for "orphan" technological devices. This will benefit handicapped citizens throughout the world. Utah has been an international leader in technology advancements. The May 5 issue of Business Week referred to Utah as "Bionic Valley" and called attention to the many prosthetic and assistive devices that Utah has developed during the past years. Most of us have heard about the "Utah Arm"; "Phoresor," a drug delivery system; the "Utah Ear," a cochlear implant; and of course the Jarvik Heart. Stimulating further development of not only "high tech" but other devices holds great promise in circumventing many of the disabilities which handicap people through the world.

Finally, the conference agreement authorizes demonstration projects for statewide transitional planning services. These model projects, of which one is targeted for my home State in Utah, address the complications faced by handicapped students in the process of transition from school programs into adult services.

I want to express my thanks to Senator WEICKER, members of his subcommittee, Senate colleagues, and House Members who worked on perfecting the provisions of this act. I also want to give special recognition to Sue Ellen Walbridge, who works for Senator STAFFORD. While waiting for surgery and during recuperation, Sue Ellen put many hours into compiling the conference documents so that consideration of this legislation could be completed before adjournment.

Mr. President, it is my hope that all my Senate colleagues will vote to accept the bill before us today. This legislation is a bill we can all proudly support.

Mr. KERRY. Mr. President, first of all, I would like to congratulate my distinguished colleague from Connecticut for his diligent leadership in developing a commendable conference agreement that will benefit countless disabled Americans. I also want to thank all of the staff for their tireless efforts throughout this process.

Mr. President, I rise in strong support of the pending conference report on H.R. 4021, the reauthorization of the Rehabilitation Act Amendments of 1986. The conference agreement culminates many months of hard work that have resulted in several new initiatives being added to the Rehabilitation Act that I believe will improve the lives and employment potential of many disabled individuals.

Historically, the Rehabilitation Act has provided essential comprehensive vocational services to mentally and physically challenged individuals across our Nation. Last year over 930,000 handicapped persons received services under the Rehabilitation Act, and over 225,000 disabled citizens were successfully rehabilitated. These numbers represent the fact that individuals with disabilities when given the opportunity can be trained to attain competetive employment and become contributing members of our society. The conference report that we are considering today will further this commitment by the American people and in my opinion will work to increase the number of handicapped persons entering the work force.

One new initiative in the act that the Congress should be particularly proud of is the new supported employment program that will be available to severely handicapped persons. Demonstration projects in this area have shown that supported employment services work and that they offer severely handicapped individuals an opportunity to better the quality of their lives through competitive employment.

The conference report also demonstrates our commitment to both Independent Living Centers and Projects With Industry. The amendments offer core funding to both these programs contingent upon programs meeting newly revised standards by the National Council on the Handicapped. Because the existing programs in both of these areas have been so successful in helping disabled persons achieve more independent lives, the conference report provides for funding of new centers and projects. It achieves this by implementing a matching formula where the programs over a period of time will match the Federal dollars by as much as 20 percent, and in some cases with the Indepedent Living Centers anywhere from 0 to 20 percent contingent upon economic circumstances.

In addition, the package includes demonstration projects in the area of transition for severely handicapped youth exiting the educational system. Experience has shown that severely disabled students having received state-of-the-art educational services often leave school with significant vocational needs and a confusing array of agencies to contact for appropriate services. To avoid confusion and loss of valuable services this legislation includes demonstration grants in this essential area of transition. Other initiatives that the legislation has focused on include improved services for the chronically mentally ill, a new priority on serving native Americans, and greater emphasis is placed on rehabilitation engineering.

The conference report before us today represents many months of detailed review and study not to mention an impressive effort on behalf of all the Members involved with this legislation to accomodate one another through a series of compromises

which I believe strengthen the existing law significantly.

In closing I would like to note that funding for the new initiatives have been included in the appropriations bill. Citizens with disabilities can look forward to a stronger rehabilitation service system that will further benefit their abilities to achieve more independent and active lives through successful employment training and employment opportunities. I urge my colleagues to join me today in adopting the pending conference report.

Mr. SIMON. Mr. President, the Senate is about to pass a significant piece of legislation affecting individuals with handicaps. The amendments agreed to in S. 2515 and H.R. 4021 and included in the conference agreement represent both the continuation of the overwhelmingly successful programs under the Rehabilitaion Act and an authorization of new intitiative. It includes administrative provisions that should substantially improve the quality of the peer review, monitoring, evaluation and technical assistance carried out by the Rehabilitation Services Administration. I commend Senator WEICKER and all of the members of the Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education for their hard work in putting together this important legislation.

For 66 years Congress has been recognizing the importance of the Federal role in rehabilitating and bringing into our Nations' work force persons with disabilities. A program that was begun with motives of offering a helping hand to those who needed it, has long ago also been recognized as a major benefit to the Nation. Since the beginning of this State/Federal partnership, more than 5.5 million individuals with physical or mental disabilities have been placed into meaningful, productive jobs. The legislation before us builds upon the successes of the past, gives assurance of continued Federal commitment to our partnership of service with the States, provides for both the stability and growth of the comprehensive services funded through this act, and reaffirms our commitment to the civil rights of individuals with handicaps.

Because these amendments affect every title of the act, and there were many differences between the House and Senate versions, the process of reauthorization has been lengthy. It has come to our attention that because of the timing of passage of this reauthorization measure, State agencies as well as other recipients of moneys under this act may be in jeopardy of major delays in receipt of funds appropriated under the authority of this new legislation. It is clearly our intent that the Department of Education release grant moneys in good faith to these State agencies and recipients while appropriate assurances, documents, and regulations are being developed to administer this new law. States are presently in need of their first quarter funds under the act in order to continue services to handicapped clients. It would be directly counter to our intent in this reauthorization to delay the release of funds that are for the benefit of individuals with handicaps.

SUPPORTED EMPLOYMENT SERVICES

The relatively new service model known as supported employment, which enables some severely handicapped persons who have not traditionally been employed in regular work settings to do so, receives substantial new funding and new emphasis in this legislation. I strongly support these inititatives. The term supported employment is, for the first time, defined in the statute and State agencies are provided the option of using their title I State grant funds to provide services leading to supported employment. States are also provided grant funds under title VI of the act to conduct a program of services leading to supported employment.

Because a supported employment client may need a variety of ongoing support services on an indefinite basis, this service model is unlike traditional rehabilitation services. Great attention was given, therefore, during the authorization process to assure that the inclusion of supported employment in the Rehabilitation Act would be accomplished in a way that would permit such services to be provided to severely handicapped clients without changing the time-limited nature of rehabilitation services that allows State agencies to serve as many as possible of the large number of handicapped persons from all disability groups who are in need of services.

Federal-State rehabilitation services are traditionally time-limited, and it is the clear intent of this new initiative in the Rehabilitation Act that services provided for supported employment clients also be time-limited. The combination of services provided by the rehabilitation agency for these clients may include a wide variety of approaches designed to meet the individual needs of the client; whether those services are termed training, follow-up, post-employment or are known by another term, however, the entire combination of services must be understood to be time-limited. It is the expectation that other State agencies and organizations will be responsible for the long-term services associated with this approach.

IMPARTIAL HEARING OFFICER

The conference agreement includes provisions related to the procedures for the review of determinations made by the rehabilitation counselor or coordinator. These provisions represent a compromise between the House bill, which maintained the State director's role in making final determinations, and the Senate bill, which substituted the decision of an impartial hearing officer for that of the State director. The conference agreement provides for a review and decision by an impartial hearing officer, with final review and decision by the director. The responsibility for assuring that services are delivered to all clients consistent with sound vocational rehabilitation principles and in accordance with the policies and procedures of the State agency remains with the director of the agency. It is the intent of this conference agreement that the State director treat the decision of the hearing officer as a recommendation to assure that such principles, policies and procedures are carried out in the provision of services to individual clients, and that the director take such action as the director deems appropriate after a review of the decision.

As an advocate of the rights of individuals with handicaps and of fair hearing processes, I nevertheless am concerned that this new provision may impose a bureaucratic rigidity on State agencies and a focus on compliance rather than service that will not be in the best interests of rehabilitation clients. One of the strengths of the program has been flexibility that has allowed services, within the context of State policies, to be tailored to individual needs. There has been no evidence presented to the Congress that indicates State rehabilitation agencies have not been addressing complaints in a fair and equitable manner. I am hopeful that the directors of rehabilitation agencies will continue to make every effort to have disagreements resolved through the pragmatic, commonsense approach that has, in fact, been highly successful and has resolved most complaints at the counselor level.

STATE GRANT ENTITLEMENTS

Mr. President, I am pleased that a misunderstanding of intent for the funding of the entitlement for State grants is being remedied in this legislation. For close to 8 years, as a member of the House subcommittee and now the Senate subcommittee with jurisdiction over this program, it has been my understanding that the entitlement for the State grant program included, for each year beyond the first year of a new reauthorization, a cost of living increase based upon the amount actually received by the States through appropriations for the previous fiscal year.

This year, for the first time, the administration calculated the amount of the authorized entitlement by adding accumulated cost of living increases only to the amount authorized for the first year of the last reauthorization, which was fiscal year 1984. The result of that calculation was a ridiculously

low figure. The result of the administration's assumption would be authorization levels for this vital program that would not even ensure current services levels of funding in the future.

We know that we are not coming close to meeting the needs of all disabled persons who need services through this program. Clearly, it would be irresponsible for the Congress to impose the types of new demands we are making on vocational rehabilitation agencies if we were not willing to ensure a continued growth in this program. We would be unfair to those who depend on these services and unfair to those who are working so hard to provide them.

The correction in the interpretation for calculating the entitlement is a critically important part of this legislation and I thank my colleagues for their support of it. In particular, Jack Duncan, the staff director for Congressman John Brademas during the many years he chaired the House Subcommittee on Select Education, deserves credit for his work in explaining the importance of this provision and helping to ensure its adoption. Over the next several years, this amendment will assure services to thousands of disabled persons who might otherwise not be served.

PROJECTS WITH INDUSTRY AND INDEPENDENT LIVING

I am pleased that provisions of this legislation will provide stability and growth in the programs authorized under the Projects with Industry and Independent Living sections of the act. The amendments are intended to ensure the survival of high quality projects and at the same time to guarantee that funds will be available for new projects in the future. I have met and talked with many of the people involved in these projects and they are some of the most resourceful and highly motivated of Americans.

I am proud of the efforts being made by American labor unions such as the International Association of Machinists and Aerospace Workers through their IAM CARES project and the AFL-CIO through its Human Resources Development Institute. These projects place both union and nonunion disabled individuals into jobs which are high paying and have the benefits that American labor has gained through its united efforts.

In Illinois we are particularly proud of our independent living centers. Marca Bristo, who runs Access Living in Chicago, could probably run a major corporation, but she gives her skills to making independent living work for people with disabilities.

There are many others like Marca, in State agencies as well as in all of the many organizations and programs funded through this act, who are devoting their lives—through research, the administering of programs or through providing services directly—to the challenging and rewarding work of bringing people with disabilities into the mainstream of American life. We can write legislation, but we have to depend on these well-motivated people to carry it out. This is why I listened to their advice while this legislation was being developed and why I support this final conference agreement. It should help them do their jobs, and through this achieve the results for individuals with disabilities that all of us intend.

Let me add my appreciation to Judy Wagner of my staff who has been supurb in her good work and her dedication to help those less fortunate. I am proud to be associated with her good work.

I support this conference agreement and urge my colleagues to do so as well.

Mr. CRANSTON. Mr. President, I am delighted to rise in support of the conference report on H.R. 4021, the proposed Rehabilitation Act Amendments of 1986, legislation to extent the authorization of appropriations for programs under the Rehabilitation Act of 1973.

Enactment of the Rehabilitation Act of 1973 marked a new era in this Nation's effort to provide disabled Americans with the vocational rehabilitation needed to help them regain employment. In the last year alone, vocational rehabilitation services under the act were extended to more than 900,000 disabled Americans, serving 63,000 men and women in the State of California alone.

Throughout my service in the U.S. Senate, I have been closely involved with the vocational rehabilitation program and the other vital programs established by the Rehabilitation Act. As a member for 7 years of the Committee on Labor and Human Resources' Subcommittee on the Handicapped, I had the pleasure and privilege of authoring much of the legislation relating to these programs.

CIVIL RIGHTS REMEDIES EQUALIZATION

Mr. President, although each and every one of the programs authorized by the Rehabilitation Act is vitally important, it is the provisions that I authored in section 504—providing disabled individuals for the first time with the enforceable right to be free from discrimination in federally funded programs and activities—that I count among my most significant efforts.

I am thus delighed by provisions included in the conference report, which I authored, to overturn the recent Supreme Court decision in the case of Atascadero Hospital versus Scanlon which substantially damaged the scope of protections provided to persons with disabilities under section 504. As a result of that decision, handed down on June 25, 1986, disabled individuals have been denied access to Federal courts for damages to remedy State agency violations of section 504.

In response to the Supreme Court's decision in the Atascadero case, on August 1, 1985, I introduced the proposed "Civil Rights Remedies Equalization Act", legislation to nullify that ruling. The provisions in the conference report are based on that legislation. Joining me as cosponsors of that legislation are Senator STAFFORD, a coauthor with me of section 504 and the chairman of the Subcommittee on Education of the Labor and Human Resources Committee; Senator KENNEDY, the ranking minority member of the Labor and Human Resources Committee; Senator WEICKER, chairman of that Committee's Subcommittee on the Handicapped; Senator KERRY, the ranking minority member of that subcommittee; and Senator RIEGLE, with whom I have worked closely over the years to improve opportunities for disabled persons, as well as Senator SIMON, Senator BURDICK, and Senator METZENBAUM—whose support for this legislation was very helpful.

This legislation would clarify congressional intent that remedies for violations of section 504 of the Rehabilitation Act of 1973 are available against the States to the same extent as they are available against Federal agencies and against local government and private recipients of Federal funds. This legislation is necessary for the purpose of implementing section 504 because of the Supreme Court ruling in the Atascadero case that, even though the statute authorizes an aggrieved party to bring suit in Federal court against a category of entities that literally includes the States, the States may not be sued in Federal court unless the law expressly makes the States answerable in Federal court.

These provisions would, in the same manner, ensure equalization of the remedies for violations of the prohibition in title IX of the Education Amendments of 1972 against sex-based discrimination in education, and the prohibition in the Age Discrimination Act of 1975 against discrimination based on age, the prohibition in title VI of the Civil Rights Act of 1964 against discrimination based on race, creed, color, or national origin, and the prohibition in any other Federal law against discrimination of recipients of Federal funds.

The only substantive change made in the legislation as introduced—establishing that the change in law would be effective only as to violations that occur in whole or in part after the date of enactment—was necessary, after extensive negotiations, in order to gain the support of the administration, for which I am most grateful.

BACKGROUND

Section 504 of the Rehabilitation Act of 1973, of which I was a principal author, prohibits Federal agencies and federally assisted programs from subjecting qualified handicapped individuals to discrimination. As the courts have acknowledged, Congress created a right of action in Federal or State court to remedy violations of section 504—with no exception in the law either from the States or for any particular type of remedy, such as monetary damages.

Nevertheless, on June 28, 1985, in the case of Atascadero State Hospital versus Scanlon, the Supreme Court held—in a 5-4 decision—that the Congress, in enacting section 504, had not exercised its authority to waive the States' general immunity under the 11th amendment to suits for damages in the Federal courts. I had joined with Senators STAFFORD and WEICKER and Representatives MARIO BIAGGI, DON EDWARDS, WILLIAM FORD, JAMES JEFFORDS, and GEORGE MILLER, in submitting an amicus brief urging the Court not to reach that result.

In this case, an individual suffering from diabetes and the loss of sight in one eye claimed that the State had violated section 504 by denying him employment in a State hospital as a graduate student assistant recreational therapist. The Supreme Court reversing the ninth circuit court of appeals, held that the individual's claim for compensatory damages against the State or a State agency could not be heard in Federal court.

The same holding also applies to injunctions, but it is well established that the 11th amendment does not bar Federal courts from issuing injunctions against named State officials, as distinguished from the State itself, even though the effect is exactly the same as an injunction against the State. Therefore, as the result of Atascadero, injunctive relief is now the only relief available in Federal court against a State agency for a violation of section 504 or any other civil rights statute grounded on the receipt of Federal financial assistance.

As a result of the Court's decision, a disabled individual who has suffered unfair discrimination at the hands of a State agency has two choices—a suit in State court for damages or injunctive relief, or both, or Federal suit for an injunction against individual State officials. Those choices are not adequate. As to the limit on Federal remedies, litigation involving a claim of discrimination often takes years to resolve. Thus, where the disabled person is seeking employment or is trying to pursue an education or to participate in a project having only a 2- or 3-year life, an injunction may come too late to be a value in remedying the harm done through the unlawful discrimination. In a very real sense, the availability of only injunctive relief postpones the effective date of the antidiscrimination law, with respect to a State agency, to the date on which the court issues an injunction because there is no remedy available for violations occurring before that date.

This result is especially devastating in the context of employment discrimination against disabled persons because they—unlike women and members of race and national origin minorities—are not protected by the Civil Rights Act Title VII prohibition against employment discrimination, which is enforceable in Federal court through suits for damages.

The availability of a remedy for damages in State court is not adequate principally for three main reasons. First, State courts—because of a variety of factors including the greater likelihood of State judges being deferential to State officials and laws—are not as likely to be as sympathetic to aggrieved parties in interpreting Federal statutes and applying them to State officials as are the Federal courts.

Second, State judges generally lack the familiarity with and the expertise in interpreting and applying Federal laws that Federal judges typically have.

Third, State courts often have backlogs far greater than those in the Federal courts in the same geographical areas.

Perhaps the best indication of the inadequacies of State courts in this regard is that, according to advice I have received from civil rights lawyers, the overwhelming majority of persons bringing suit based on claims that their rights under Federal laws have been violated by State agencies file their cases in Federal court.

These provisions would reverse the holding in Atascadero by providing that, unless otherwise expressly provided in Federal statute, the remedies available to enforce the four major Federal civil rights laws noted above, and any other Federal civil rights law grounded on receipt of Federal financial assistance, against public or private entities other than States shall also be available against the States. Thus, as a result of this legislation, if a Federal suit for damages were generally available to enforce a civil rights law against a recipient of Federal funds—and nothing in that law were to exempt the States from such a suit—a Federal suit for damages would now be available against a State or a State agency.

In this way, this legislation would eliminate the court-made barrier to effectuating congressional intent that the holding in the Atascadero case so unwisely has raised. Under this legislation, a statute that is, on its face, equally as applicable to and enforceable against a State agency as it is against other entities, will be enforceable by the same means against State and non-State entities alike.

CONCLUSION

Mr. President, I believe the provisions in the conference report to overturn the Atascadero decision reflect the views of an overwhelming majority of my colleagues that civil rights laws prohibiting discrimination on the part of Federal agencies and the recipients of Federal financial assistance should be enforceable against the States to the same extent that they are enforceable against cities, counties, other units of local government municipal bodies, private schools, businesses, and other entities—and the Federal Government itself. The provisions in this legislation will provide for that result and, thus, make clear that the States may be held accountable in Federal court for injuries they inflict on disabled persons, women, members of minority groups, and older person through violations of such statutes.

This has not been much of a Congress for civil rights legislation, and I'm truly delighted that we will be able to enact at least this one signficiant civil rights bill at this time.

Mr. President, I want to express my deep gratitude to the Senator from Connecticut [Mr. WEICKER], the chairman of the Handicapped Subcommittee, and to the Senator from Massachusetts [Mr. KERRY], the ranking minority member of that subcommittee, the Senator from Vermont [Mr. STAFFORD], and the Senator from Illinois [Mr. SIMON] for their support for this legislation. The House of Representatives unaimously passed this conference report, and I sincerely strongly urge Senate passage today.

Mr. President, I ask unanimous consent that the Justice Department's official report, dated July 13, 1986, on this legislation be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND,
INTERGOVERNMENTAL AFFAIRS,
Washington, DC, July 13, 1986.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: This letter presents the views of the Department of Justice on a proposed amendment in the nature of a substitute for S. 1579, a bill to "clarify that the remedies available for the enforcement of certain civil rights statutes are applicable to the States." We understand that this amendment will be offered during the Committee's mark-up of S. 1579. The amendment seeks to abrogate the sovereign immunity of the States under the eleventh amendment to the Constitution of the United States for certain civil rights statutes. Specifically, the amendment provides that States are not immune from suit in Federal courts for violations of section 504 of the Rehabilitation Act of 1973, as amend-

ed, 29 U.S.C. 794, title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4, title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681-1686, the Age Discrimination Act of 1975, 42 U.S.C. 6101-6107, and the provisions of other Federal statutes that prohibit discrimination by recipients of Federal financial assistance. The amendment to S. 1579 states that remedies now available, at law or at equity, under these civil rights statutes against any public or private entity other than a State will be available to the same extent against a State. Unlike earlier versions of S. 1579, this bill does not apply retroactively, i.e., the bill would apply only to violations of the civil rights laws that occurred in whole or in part after the date of enactment of S. 1579.

The proposed amendment to S. 1579 is a legislative response to the Supreme Court's decision in *Atascadero State Hospital* versus *Scanlon*, 105 S. Ct. 3142 (1985). In the *Atascadero* case, the Supreme Court held that suits seeking retroactive monetary relief from States under section 504 are proscribed by the eleventh amendment to the U.S. Constitution. The Court stated that Congress may provide for suits against the States to enforce the fourteenth amendment or may, under the spending power, condition receipt of Federal funds by states upon their consent to be sued. The Court noted, however, that the exercises of these congressional powers may not be left to implication. Congress must explicitly set forth in the statute its intent either to abrogate the States' sovereign immunity or to make waiver of sovereign immunity a condition of accepting Federal funds. After examining section 504 and the 1978 amendment to section 504, the Court concluded that Congress had not explicitly exercised either of these powers when it enacted section 504.

The Department believes that this Supreme Court decision was correctly and rationally decided. In fact, the Department had filed a brief amicus curiae stating that section 504 did not abrogate the eleventh amendment immunity of a state because Congress had not evinced a clear and explicit expression to waive the eleventh amendment in enacting section 504. However, Atascadero provides the blueprint for Congressional action to waive the eleventh amendment's ban to suit in Federal court under the fourteenth amendment and the spending power. The proposed amendment to S. 1579 fulfills the requirements that the Supreme Court laid out in Atascadero. Thus, to the extent that the proposed amendment is grounded on congressional powers under section five of the fourteenth amendment, S. 1579 makes Congress' intention "unmistakably clear in the language of the statute" to subject States to the jurisdiction of Federal courts. 105 S. Ct. at 3147. See Fitzpatrick versus Bitzer, 427 U.S. 445 (1976). To the extent that the proposed amendment is grounded on congressional spending powers, S. 1579 makes it clear to states that their receipt of Federal funds constitutes a waiver of their eleventh amendment immunity.

Because the proposed amendment to S. 1579 falls within the parameters of congressional authority that the Supreme Court has established in this area, the Department of Justice has no objection to S. 1579 if so revised. The Administration would not support versions of this bill that would provide remedies retroactively before the date of enactment of S. 1579. To do so would be unconstitutional under Atascadero and under Pennhurst State School and Hospital versus Halderman, 451 U.S. 1 (1981). Retroactive application of this bill would not be supported either by the spending power or by the fourteenth amendment. The amendment in the nature of a substitute, however, contains neither of these failings. It merely provides a Federal forum for remedies against States for violations of Federal statutory rights. It does no damage to the fundamental constitutional guarantee of state sovereignty that underlies our Federal system.

For these reasons, if amended as discussed above, the Department of Justice is not opposed to enactment of S. 1579.

The Office of Management and Budget has advised the Department that there is no objection to the submission of this bill report from the standpoint of this Administration's programs.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Mr. STEVENS. Mr. President, I ask for the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

CORRECTING THE ENROLLMENT OF H.R. 4021

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of House Concurrent Resolution 400 correcting the enrollment of H.R. 4021.

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

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 400) to direct the Clerk of the House of Representatives to make corrections.

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

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

The concurrent resolution (H. Con. Res. 400) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

ELECTRIC CONSUMERS PROTECTION ACT OF 1986—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on S. 426 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 30, 1986.)

Mr. JOHNSTON. Mr. President, today I believe that we are at the end of a long, hard journey. After more than 3 years of constant debate, negotiation and compromise in this and the previous Congress, we are finally ready to enact S. 426, a bill that will clarify and improve the process under which hydroelectric projects are relicensed by the Federal Energy Regulatory Commission.

At the outset I congratulate the conferees from both Houses for their patience and dedication to a difficult task. The conference easily could have dissolved in acrimony. It did not, and that is a tribute to the spirit of cooperation that emerged in the face of a number of contentious and complex issues.

Chairman JOHN DINGELL of the House Committee on Energy and Commerce deserves our thanks for the leadership he provided on the House side, as does Chairman ED MARKEY of the Subcommittee on Energy Conservation and Power. I am also grateful to Congressman RICHARD SHELBY of Alabama, the original sponsor of the relicensing bill in the House, and to Congressman CARLOS MOORHEAD, the ranking minority member of the House Subcommittee, for their helpful insights throughout the conference.

On the Senate side, I commend the excellent job done by Senator MCCLURE as chairman of the conference. Without his unflagging patience and leadership, we might never have gotten to this point at all. I also salute the contributions of Senator EVANS, Senator METZENBAUM, Senator FORD, Senator MELCHER, and the original sponsor of S. 426, Senator WALLOP. Their support, good judgment, and fairness were critical to success of our efforts.

Finally, I thank the staff of both Houses for their many long hours of work on S. 426 and their creativity in helping to solve the difficult problems raised in conference.

For many, the subject of hydroelectric relicensing is obscure, but that does not alter its importance. Licensed hydroelectric projects currently provide a significant percentage of our nation's electrical generation capacity at a fraction of the cost of other alternatives and without creating any pollution. The benefits of this power resource flow to millions of customers throughout the country.

Mr. President, when the Committee on Energy and Natural Resources began the effort on this bill it had two main objectives. First, the committee wanted to clarify that no preference exists for publicly owned utilities over investor-owned utilities in the competitive relicensing of hydroelectric projects. We made that choice on the basis of fairness to electric consumers as a whole. Our decision was based on the following considerations:

First, publicly owned utilities already have significantly lower average rates than investor-owned utilities;

Second, for all practical purposes, investor-owned utilities pass on the full low cost benefit of hydropower to their customers; and

Third, investor-owned utilities serve many more customers than publicly owned utilities.

In short, the existence of a preference for publicly owned utilties in relicensing would have created nothing less than a taking from the many for the benefit of an already-advantaged few. I am happy to say that the conference report on S. 426 makes it absolutely clear that there is no public preference in relicensing.

The second objective of the committee was to ensure that consumers who presently benefit from licensed hydroelectric projects do not lose those projects unless it would clearly be in the public interest for the projects to transfer to another licensee. In effect, we recognized that continuity in ownership and management of these projects is worthwhile and that, unless a good reason exists, consumers should not suffer the disruptions and economic dislocations that would invariably be associated with a license transfer. The price to these customers of not correcting the problems in present law would be measured in billions of dollars. That amount is hardly inconsequential. With good reason, therefore, S. 426 has been entitled "The Electric Consumers Protection Act of 1986."

I should note that our desire was to protect the customers of existing licensees, whether those licenses are publicly or privately owned. Again, I am pleased to say that the conference report to S. 426 fully accomplishes the committee's original objective.

Mr. President, successful enactment of this bill has not been won without all sides paying a price in terms of compromise. At this point, I wish to address a few of the more troublesome issues raised in conference and the reasons I am able to accept the resolutions we have arrived at in the conference report.

Certainly, one of the most sensitive issues the conferees considered was the treatment of the recommendations of fish and wildlife agencies in the licensing of hydroelectric projects. The Senate conferees had grave reservations about the approach contained in the House-passed version of S. 426. However, out of deference to the strong and persuasive views of Chairman JOHN DINGELL of the House Committee on Energy and Commerce, we did accept the House fish and wildlife provision, but only after a small but critical amendment. That was the substitution of the phrase "equal consideration" for "equitable treatment" in amended section 4(e) of the Federal Power Act. By doing this we made it clear that FERC must consider fish and wildlife needs equally with the development purposes for which licenses are issued. However, the amendment to section 4(e) also makes clear that while full and genuine consideration of fish and wildlife is required, equal treatment is not. Instead, the reconciliation of power and other development needs with fish and wildlife needs in cases of conflict is ultimately left to the public interest judgment of the Federal Energy Regulatory Commission.

In the statement of the managers, the conferees provided important guidance to the Commission on making this public interest judgment. Fortuitously, as we wrote the statement, we were presented with a real life situation in Nebraska that, at least on the surface, pits the power and development needs of two projects against those of fish and wildlife. The statement of the managers contains a section dealing with the concerns of the distinguished Senators from Nebraska with respect to these projects. I wish to make it very clear that the language in the statement of managers which addresses the Nebraska situation was also intended by the conferees to provide general guidance to the Commission concerning its implementation of the fish and wildlife provisions of S. 426.

One important issue that was resolved by the conferees in an entirely satisfactory manner was the consideration of the economic impacts of project transfer upon the customers of competing applicants. The conferees realized that consideration of economic impacts is conceptually subsumed within the consideration of need for power from a project. Consequently, the Senate conferees agreed to drop economic impacts as a separate relicensing criterion in return for an explicit expansion of the need for power criterion. The need for power criterion adopted by the conferees requires the Commission to compare, among other things, the aggregate benefit to the customers of a nonlicensee applicant of receiving a project with the aggregate cost to the customers of an existing licensee of losing a project. This inquiry should examine total costs and benefits on either side and not count the number of customers served in either case.

The conferees agreed to the Senate position of not increasing beyond existing law the compensation to be paid to existing licensees upon project transfer. I strongly support this decision of the conferees because I believe that to have done otherwise would only have diluted the protection to existing licensees otherwise afforded by S. 426. Clearly, the compensation provision contained in the House bill could not and was not intended to make an existing licensee whole. As such, its inclusion in the conference report could only have had one effect, and that would have been to make it more likely that the Commission would transfer projects in relicensing. That is a result that I have never been willing to accept unless there is a clear and independent reason for transfering the project in the public interest.

Finally, I am very troubled by the adoption in conference of a provision to compensate those competing with existing licensees in pending cases. As a matter of public policy, grandfather provisions such as this one should only be included when there has been justified reliance upon the provisions of existing law. However, in my opinion, there cannot have been any such reliance under the facts of the pending cases. Thus, I take some solace from the fact that in order for a competing applicant to recover anything more than a nominal amount from an existing licensee, the conference report in my opinion requires the applicant to make a threshold showing of detrimental reliance.

Mr. McCLURE. Mr. President, I rise in support of S. 426, the Electric Consumers Protection Act of 1986. As chairman of the conference committee and the Senate authorizing committee, I believe it is important that I make a few remarks as part of the legislative history of this act.

The conference agreement accomplishes the central objectives of both the Senate and the House versions. I am pleased to report to the Senate that in all significant respects the substance of the provisions of the Senate-passed version have been preserved, and in many respects reinforced by the agreement.

Before providing an overview of the agreement, I would like to acknowledge the contributions of my colleagues who participated in the conference. Senator WALLOP originally introduced S. 426, and deserves consider-

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able credit for bringing this issue to the attention of the Senate and initiating the process. Senator JOHNSTON also introduced legislation and his efforts helped shape the form and content of the legislation. As chairman of the Energy and Natural Resources Committee, I was happy to work with both of them to fashion the product which we brought to the Senate floor earlier this year. I would also like to acknowledge the contributions made by Senator HATFIELD, Senator MURKOWSKI, Senator EVANS, Senator FORD, Senator MELCHER, and Senator METZENBAUM. Each has made significant contributions and I think that the conference agreement fairly and carefully reflects and protects their concerns. In managing this measure on the Senate floor and then while serving as chairman of the conference, I have endeavored to preserve the position of the committee and the Senate, and I think that in many ways, the conference agreement improves on the objectives set forth by the Senate.

I would like to start by focusing on the central reason for this legislation, and that was to clarify what the public policy should be on relicensing. This legislation originated from the uncertainty engendered by the conflicting decisions by FERC in the Bountiful and Merwin cases as to whether a municipal preference should apply in relicensing proceedings. As incongruous and contrary to stability as such an interpretation would be, FERC so held in the Bountiful decision. FERC reversed that interpretation in the Merwin decision, prompting a series of court interpretations. The determination of public policy, however, should not be left to the varying interpretations of agencies, and certainly not the courts. The results of a municipal preference in encouraging raiding and potentially massive disruptions of service would be unconscionable. Both the Senate and House agreed.

The Senate started from a position that the existing licensee should retain the license unless a competing applicant produced a better adapted plan. The House attempted to provide unbiased competition, but also attempted to discourage competing applications by increasing the compensation owed to the existing licensee. In conference, the House agreed to delete their provision on compensation for the same reason which led the Energy Committee to delete it earlier. That reason was a concern that increasing compensation might actually encourage license transfers.

The House quite correctly pointed out that while the Senate appeared to have a preference for the existing licensee, there was no standard as to what constituted a better adapted plan. There was the potential in the Senate bill that FERC could transfer a license for only a minor difference. In addition, the House shared concern with the Senate that there was the potential for goldplating applications. Given the value of the hydro resource, we also shared the concern that applicants would be encouraged to throw money at applications.

The conferees agreed that FERC's conditioning authority should be improved and that those elements which are covered under sections 10 (h) and (j) would not be the subject of competition. We agreed on that approach since the appropriate terms and conditions depend on the project, not on the applicant. Whatever conditions are appropriate would apply no matter who obtained the license. In addition, the conferees made the implicit incumbent preference contained in the Senate approach explicit by directing FERC to ensure that insignificant differences between applications are not determinative and do not result in the transfer of a license. This is a significant improvement on the Senate version. A competing applicant must now have a clearly superior application. The combination of the parameters set by the section 10 conditions on whether proposals are material or goldplating will focus FERC's review on the criteria set forth in section 15. Those criteria deal with the ability of the applicant to comply with the terms and conditions of the license, each applicant's relative need for the project power, and the economic impact of the loss of a license. The Senate version of S. 426 set out economic impact as a separate criterion, but at the request of the House conferees, the concerns which led to the inclusion of the economic impact criterion were folded into an expanded criterion of need for power as originally included in the House version.

I want to take a few moments to discuss one aspect of the need for power criterion which is critical to an understanding of how FERC is expected to act. In evaluating an existing licensee's need for power and evaluating the availability of alternatives, FERC is expected to rely on the licensee's evaluation of the reasonably available alternatives.

The Senate provisions on "economic impact" were not specifically adopted. Instead, the conference agreement includes a "need for power" criterion that is much broader than in either the Senate or House bill and incorporates the substance of the original Senate provisions. The conference agreement would require the Commission to evaluate the relative need for power of each applicant for the project to serve its customers over the short and long term, including consideration of the reasonable costs and the reasonable availability of alternative sources of power. This is a recognition on the part of the conferees of the real world need to look at the availability of alternative sources over the entire term of the license.

The availability of alternative power for a short period of time relative to the term of a license, cannot and should not be determinative in selecting between competing license applications. Indeed, an important element in the Electric Consumers Protection Act of 1986 is to provide the consumer with stability and reliability for the future. For the FERC to base its licensing decisions solely on short-term projections of the availability of alternative power sources would be contrary to the act and the intent of the Congress.

One needs only to look to my own Pacific Northwest as an example. Presently, the Pacific Northwest, as a whole, has a surplus of electrical power. Projections indicate that this surplus could continue for the next decade. On the face of it, this would seem to be a readily available alternative source of power, but it is not. First, the surplus is predicted to last, at best, only the equivalent of one-third the length of a license term. Second, the Pacific Northwest is hydro based and therefore subject to the vagaries of rainfall and snowpack. A water short year could turn surplus into deficit with inexorable results. And third, economic growth and renewed vitality in the region could rapidly absorb the present surplus.

Such a volatile short-term surplus situation should not be the sole basis upon which the FERC determines between competing applicants. It would not be in the public interest. It goes without saying that the availability of supply does not provide the same reliability of supply that an applicant would have from power supplied from a dam which it held under license from FERC.

In many instances, the differences between the Senate and the House were simply matters of form and not substance. A good example is the House language which we agreed to with some modifications on consideration of fish and wildlife values. When we considered this legislation in the Senate, we sought to ensure that fish and wildlife considerations were fully and deliberately reviewed by FERC in setting conditions on a license. The House had the same concern. Neither body considered giving the fish and wildlife agencies the same type of mandatory conditioning authority which they have under section 30(c) for exemptions. Neither did either body want in any way to interfere with the role of FERC in balancing competing values. The Senate had taken an approach of requiring FERC to set forth the reasons why it did not adopt a recommendation. The House preferred a separate procedure under which FERC would make a finding of

inconsistency with the purposes or requirements of the act or other provisions of law. The conferees agreed that the House provision was a preferable format because it included a specific benchmark for FERC to reject or modify recommendations. The conferees agreed to change the word "treatment" in the House provision to "consideration" to avoid any possible implication that the new section 10(j) imposed a substantive standard for actual conditions rather than a procedural requirement for review of recommendations. "Equal consideration" is the standard for review in both sections 10(j) and 4(e). While having these values considered is now a "cost of doing business" as stated in the statement of managers, the consideration by FERC must be one of weighing the elements of public interest in a reasonable manner.

Both the Senate and House conferees agreed that in the past fish and wildlife considerations had not been given the full and thoughtful consideration which they should have received. Both sides agreed that FERC has improved its procedures, but we did believe that we should ensure that there would be no backsliding. To some extent, what we are doing is redundant since we assure that all Federal agencies take their responsibilities seriously and perform their missions with deliberation and in good faith. FERC is required currently to consider fish and wildlife agency recommendations which they receive in a timely fashion. Section 10(j) continues and emphasizes this process as a statutory matter. FERC is also required to consider under section 10(a), recreation, flood control, irrigation, and a whole variety of other issues involved in the best use of a water resource. We expect that FERC will give each of these values the same deep and thoughtful consideration which it gives to power and developmental purposes. Consideration, however, only provides an information base for FERC to use in setting conditions. Consideration does not dictate results. One important benefit of the House approach in 10(j) is that it would prevent any implication that fish and wildlife agency recommendations would dominate the power and other development purposes for which a license is issued. The statement of managers is quite explicit on this point. "Under new section 10(j), FERC is empowered to decide license terms and conditions, but there is a guarantee that the recommendations of the agencies can not be lightly dismissed. FERC is not required to adopt recommendations that are inconsistent with any other purpose of the Federal Power Act as expressed in section 4(e)."

I do not want to suggest that the discretion expressed in that phrase means that FERC should seek reasons to reject recommendations. They are only required to consider recommendations which are timely, not to adopt them. We expect that FERC, where it finds that a recommendation is inconsistent with one or more purposes, such as irrigation, will see whether there is an alternative way of accomplishing the objective of the recommendation which would minimize the effect on other project objectives. The objective of the section is to provide FERC with the necessary information with which to fashion conditions for fish and wildlife which will be consistent with the power and other development purposes.

I would also note the conference agreement provisions on the applicability of PURPA benefits to small hydroelectric projects. I am pleased to report that those applications which are "in the mill" have been adequately protected. Existing applicants are subjected to three different levels of applicability of the new law depending upon how far along in the process they are. Those who have made "substantial investment" are protected. While the "substantial investment" category has no assurance that it will be free from all of the new requirements, if unsuccessful in their petitions, they are out from under the moratorium provided in the House provisions.

The Senate adopted the House moratorium provisions related to PURPA benefits without change. However, I believe it is important to bring to the attention of the Senate, two specific provisions which I believe are unclear. The House bill and the conference agreement provide for a moratorium on new applications for PURPA benefits until a study is conducted and submitted to Congress. While the Senate conferees agreed with this study we note that the House provision requiring the study to be in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, [NEPA] is surplusage in that current law does not require a report or study submitted to Congress to be subject to an environmental assessment or environmental impact statement under 102(2)(c). I would also note that in that the study is for a report to Congress, it cannot be construed as a final agency action within the meaning of NEPA, or requiring a order by FERC. Thus the requirement of section 8(d)(5) of the conference report regarding judicial review is illusory in that FERC's study and report to Congress, including any "determinations" or "findings" which they make, are totally within their discretion. They are not intended by the Senate conferees to require any formal proceedings.

As a final comment, I will note that the effective date of the conference agreement applies certain sections of the new law, such as 10(j) as amended and the enforcement provision, to existing applicants, licensee, and so forth. While I do not have any disagreement with this result, I do wish to emphasize that this is not a mandate to FERC to start anew in all pending applications. For example, where the fish and wildlife consultation and condition process has been completed or nearly so, FERC should take into consideration the degree to which the recommendations by the National Marine Fisheries Service have been taken into account through the recommendations of the Fish and Wildlife Service. FERC should build on the established record and expeditiously take into account the additional requirements of this law. The Senate conferees did not intend for an extended delay in processing to result by virtue of this new law.

I wish to emphasize at this point that I strongly agree with the statement of managers. As such it is neither the Senate or House reports on this legislation, but a new statement of combined agreement. I support this statement because it includes by reference, all the relevant case law applicable to FERC on environmental conditioning and need for power extant prior to enactment. It also clarifies the Senate bills provisions which were not intended to affect the current operation of the Fish and Wildife Coordination Act. It also retains the Senate provision on the antitrust law which neither expands nor diminishes FERC authority in this regard.

PENDING NONCOMPETING RELICENSING APPLICATIONS

Mr. EVANS. I believe the chairman knows of my concern for several uncontested hydroelectric projects in my State which are currently pending before FERC and operating on yearly licenses. I refer specifically to the Skagit River dams of Seattle City Light, the Cushman project of Tacoma City Light, and the Rock Island project of Chelan County PUD. I want to make certain that the passage of this act does not overly complicate the pending applications and previous negotiations which these utilities have carried out with FERC and the interested Federal and State agencies. The various provisions of the conference agreement do affect these projects, although the savings clause in section 17(a)(6) specifically precludes the filing of a competing application where the time for filing has expired. But I want to make certain that these provisions will not cause the existing licensees to retrace steps in the administrative process which the utilities have already taken pursuant to existing FERC regulations for relicensing.

Does the chairman agree that this act is not intended to cause existing li-

censees to reprocess their current relicensing applications or resubmit, rework, or renumber their already submitted exhibits for which they have made good faith efforts to follow the applicable FERC regulations?

Mr. McCLURE. That is my understanding.

Mr. EVANS. Is it the chairman's further understanding that FERC should not use the new requirements imposed by this act to restart the application process from the beginning?

Mr. McCLURE. The Senator is correct. FERC should use the existing record which has been created to date for each of these applications and build upon it. To the extent additional actions are required of the applicant pursuant to this act, FERC should establish procedures which will allow for those actions to be completed expeditiously.

PUBLIC LAW 278 EXEMPTING REPORTING REQUIREMENTS FOR PUBLIC UTILITIES

Mr. EVANS. Mr. Chairman, the 83d Congress passed in 1953 Public Law No. 278 which made certain requirements of the Federal Power Act (FPA) inapplicable to States and municipalities in order to facilitate the financing of dam construction. These requirements, pertaining to Federal recapture of any project upon license expiration according to section 14, exempted certain recordkeeping and accounting procedures otherwise required under sections 301 and 302 of the FPA. Furthermore, the filing of a statement of original cost under section 4(b) of FPA was made inapplicable to any project licensed to a public utility. These requirements were exempted for municipal projects in order to assist the sale of bonds for financing the development and improvement of such projects.

These objectives remain important today. Municipal preference in section 7(a) continues to apply in original licensing proceedings and there are many publicly operated projects proceeding on the basis of Public Law No. 278. Does the Chairman agree that the conference agreement does not repeal or otherwise alter the provision of Public Law No. 278?

Mr. McCLURE. Yes; the conferees do not intend to alter or amend Public Law No. 278 in any way.

Mr. HATFIELD. Would the Senator yield for an exchange regarding the meaning of the conference report's "need for power" criterion?

Mr. McCLURE. I would be pleased to respond to any questions the Senator from Oregon may have.

Mr. HATFIELD. As I understand the Senate bill's "economic impact" criterion, it was intended as a codification of the Federal Energy Regulatory Commission's existing practice of applying economic impacts analysis in relicensing proceedings. Under this practice, the Commission, in determining which application is best adapted to the public interest, considers the relative alternative sources of power for each applicant. If consumer cost inequalities would be occasioned by a license transfer, the Commission has found the application of the existing licensee superior to that of the competing applicant.

Mr. McCLURE. That is correct.

Mr. HATFIELD. The Joint Explanatory Statement of the Conference Committee states that the need for power criterion adopted by the conferees "is much broader" than the Senate bill. It further states that the conferees contemplate that the Commission will "evaluate the relative need of each applicant for the project to serve its customers over the short and long term, including consideration of the reasonable costs and the reasonable availability of alternative sources of power * * *" Since this is essentially the same analysis as that currently employed by the Commission in relicensing proceedings, I simply seek to clarify that the need for power criterion contained in the conference report contemplates such an analysis in future relicensing proceedings.

Mr. McCLURE. That is correct. The need for power criterion contained in the conference report was an attempt to subsume the Senate bill's economic impact test into the need for power criterion in such a way as to address a number of economic factors relevant to the license applicants's comparative need for the project, including the reasonable costs and availability of alternative sources of power, the effect on each applicant's operating and load characteristics, and the effect on the communities served by the project. Therefore, a relative economic impacts analysis such as that currently employed by the Commission in relicensing proceedings is envisioned by the need for power criterion.

Mr. HATFIELD. I thank the Senator for this clarification.

Mr. EVANS. One of the factors that is discussed as part .of the "need for power" test requires FERC to consider "the effect on the provider, including its customers, of the alternative source of power * * *." As I understand the intent of the conferees on this point, it would require FERC to consider, for example, the effect on the Bonneville Power Administration, including all of BPA's customers, for which there is a legal obligation to serve, if a recipient of power from Bonneville were an unsuccessful applicant. Does the Chairman agree with my understanding of the conferees' intent?

Mr. McCLURE. Yes.

HYDROELECTRIC RELICENSING

Mr. EVANS. Mr. President, let me express my appreciation to the Chairman of the conference committee, Senator McCLURE. He managed this difficult conference with considerable skill and patience, and graciously accommodated many of my concerns. In addition, Senator JOHNSTON played a crucial role in the successful resolution of this conference.

This bill will be of great importance to the State of Washington over the next several decades. Our region's economic infrastructure has been built, to a large extent, on the abundant hydropower resources of the Pacific Northwest. Many of the dams are federally owned and operated; but many are non-Federal dams operated by public or private utilities that are subject to FERC jurisdiction and the provisions of this bill.

More broadly, however, this bill will be of crucial importance to our Nation in the future since it sets priorities for the use of an increasingly valuable resource—water. When this bill was first debated in the Congress, the issue was which group of users, public or private, would enjoy the use of the water for hydroelectric power generation. But, as we considered and amended the original bill in the Senate, I think all of us began to see that the bill has broader implications than merely the allocation of hydropower benefits.

Mr. President, water and navigable rivers are basic public resources over which the Federal Government has authority. Our society has conflicting goals and needs which must be carefully considered to determine which use is in the broad public interest. Part I of the Federal Power Act [FPA] was enacted in recognition of that fact in May 1920 after extensive debate in the Congress for over a decade. The important concern was the balancing of the multiplicity of uses of the water resource, as non-Federal utilities received the right to license hydroelectric dams on our Nation's waterways.

The focus of my concern in this legislation has been to ensure that FERC will better address the broad public interest standard provided in section 10(a) in its relicensing proceedings. FERC's record thus far in providing equal consideration to nonpower purposes and in defining the optimal use of the water resources has not been good. In our hearings on S. 426, we received considerable testimony stating that FERC is not giving sufficient consideration to the plans of States and other agencies having responsibilities for the use of the water resource. Also, FERC's lack of attention to the protection, mitigation, and enhancement of fish and wildlife resources associated with the water resource is well-documented.

The bill from the conference committee, along with the statement of managers, however, has brought the pendulum from the power development extreme more toward the middle of the broad public interest test. It should go a long way toward assuring

that resources such as fish and wildlife, as well as irrigation, flood control, recreation, and other uses, will receive the equal consideration that they deserve in relicensing proceedings. FERC should immediately recognize the heightened importance that Congress is providing such nonpower values included in this bill and modify its practices and regulations for relicensing proceedings.

I believe strongly that each successive generation in the future will accord different values to our valuable water resources. For that reason, I insisted in our Senate amendments that we shorten the statutory license term from 50 to 30 years, unless legitimate financial considerations support a longer term. Section 5 of the conference agreement modified my amendment slightly by providing a license term of 30 to 50 years, leaving the Commission to determine what term is in the public interest. Therefore, there is no change in existing law's maximum duration for a license term of 50 years, section 6 of the FPA. It is my understanding that the conference agreement's language in section 5 conforms with current FERC practices that new licenses—or relicenses—are issued for a 30-year period unless the Commission finds a reason to issue the license for a longer period.

I believe that section 5, considered along with the other provisions of the conference agreement, clearly puts the burden of proof on the applicant who desires a term longer than 30 years. A license term of 30 years gives each generation of Americans the chance to reassess the comprehensive development of our river basins in the context of the values on which it places a high priority. Such a license term also allows for the chance to take a new look at needs and technologies which will undoubtedly emerge during the period of the license. The shorter license tenure for relicensing reflects, in general, that the initial costs of financing the construction of the dam have been fully repaid and amortized, and that the financing needs of the licensee for the project—which has a useful life from 80 to 100 years—are less significant.

The conference agreement also further clarifies the roles and responsibilities of the Commission and resource agencies in the licensing process. It requires that equal consideration be given to energy conservation, fish and wildlife, recreation and other environmental quality values along with water development values. Section 10(j) also defines a process for resolving any differences which may arise specifically with recommendations for fish and wildlife protection and mitigation. The emphasis is on FERC to cooperate with the relevant agencies and tribes to resolve any inconsistencies in recommendations for terms and conditions of the license. The conference agreement stresses equal seats at the table and a cooperative approach among the agencies and tribes—not confrontation and litigation. In my role as the first chairman of the Northwest Power Planning Council, I worked closely with the State and Federal agencies and Indian tribes to develop a cooperative approach for the protection and enhancement of fishery resources in the Columbia River basin. Each was an equal partner in developing the fish and wildlife plan. We were able to avoid a great deal of costly litigation and public confrontation. FERC should follow a similar approach.

At the same time, FERC must give adequate consideration to the power development purposes of the license when considering the nonpower purposes. The Commission must balance considerations of the supply of electric power against the needs of environmental and other improvements in the relicensing. I would have preferred bill language similar to that of the Pacific Northwest Power Act requiring an "adequate, efficient, economical, and reliable power supply" for the Pacific Northwest region. But I believe that addition of the phrase "equal consideration" in section 4(e) will have a similar result in requiring a balancing of power and nonpower values.

The conference agreement is clear, however, that setting the terms of the license for fish and wildlife resources should be done pursuant to section 10, not pursuant to the relicensing provisions in section 15. Competing for the new license through excessive bidding for fish and wildlife resources, irrespective of economic costs—goldplating—should not be allowed under section 15. I insisted on an amendment accepted in the conference committee that precludes the comparative evaluation of fish and wildlife mitigation recommendations in relicensing, section 15(g).

The conference agreement suggests in the statement of managers that "no one expects FERC to require an applicant to tear down an existing project." While I would not disagree with the assertion that the vast majority of projects in this country will not be removed in accordance with this new bill, I don't believe this legislation restricts the Commission's authority to consider removal as an option where the public interest so dictates. The conferees agreed that section 10 already requires the Commission to take into account "existing structures and facilities" during relicensing. Removal of the dam may not be a feasible option that meets the public interest test. But we should not explicitly preclude dam removal as an option for possible reasons of public safety, navigational improvements, restoration of valuable anadromous fishery resources, or general comprehensive development purposes during relicensing. In certain instances, the Commission should be able to consider removal as one option during a formal relicensing proceeding in order to receive complete data on the various options.

Finally, I should note that the conference agreement does not modify or diminish the right of the United States to recapture the project at the termination of the license under section 14 of the Federal Power Act. While this right has not yet been exercised by the United States, nothing in the conference agreement changes the Federal Government's fundamental stewardship role of our water resources. As President Theodore Roosevelt stated in 1908 after vetoing the Rainy River bill:

> Every permit to construct a dam on a navigable stream should specifically recognize the right of the Government to fix a term for its duration and to impose such charge or charges as may be deemed necessary to protect the present and future interests of the United States . . .
>
> Fifth. Provision should be made for the termination of the grant or privilege at a definite time, leaving to future generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at the time.

The original Federal Power Act, in sections 4 and 7, provided the Commission with broad authority to "develop, conserve, and utilize the water resources of the region" in which the project is located. Section 10(a) required the applicant to submit an application for the project that is "best adapted to a comprehensive plan" for the development of the waterway. In the future, any Federal agency conceivably could conclude that none of the non-Federal applications would be the optimal plans for the comprehensive development of the waterway in a region, and that Federal recapture should be exercised. In such a case, FERC would have authority to recommend such an option to the Congress pursuant to section 7(c) of FPA, after public hearing and comment. Even if FERC does not agree with such a recommendation of a Federal agency, it must order a stay of the license for 2 years while Congress determines whether Federal recapture is the appropriate option.

Mr. MURKOWSKI. Mr. President, I rise in strong support of the conference committee's agreement on S. 426, the Electric Consumers Protection Act of 1986. The efforts of the chairman of the conference committee, the distinguished senior Senator from Idaho, Mr. McCLURE, and those of the junior Senator from Louisiana, Mr. JOHNSTON, were extraordinary in reaching agreement with the House. They most ably and pursuasively defended the position of the Senate, as did all of the Senate conferees, but what is of great-

er importance, they spoke on the behalf of the electric consumer. During the long hours when the conferees met, the Senate Members never lost sight of the real intent of this legislation, the protection of the consumer and the public interest.

I believe that the agreement proposed by the conferees retains that protection and provides for the electric consumer an assurance that they will continue to receive the benefits of reliable and economic sources of hydroelectric power while at the same time recognizing the benefits that accrue to the Nation at large as a result of the development of our hydroelectric resources and appurtenant values. The scope of the measure reflects the complexity of the issues involved and the directions given to the Federal Energy Regulatory Commission, as well as the statutory changes made to the Federal Power Act, will serve the public interest in guiding the development of our hydroelectric resources for years to come.

As chairman of the Subcommittee on Water and Power, it is my privilege to chair the Senate hearings held on the Electric Consumers Protection Act of 1986. I would like to reflect for a moment on some of the information gathered by the subcommittee, thereby providing some additional guidance as to the interpretation of the conference report.

I recall that in my opening remarks when I called the hearing to order on Tuesday, June 11, 1985, that there were three fundmental questions which needed to be addressed by the Congress. Will the proposed legislation promote the development of our Nation's water resources? Will the legislation serve to encourage reliable electric service to the consumer? Will the legislation not impose an undue burden on the ratepayer?

As passed by the Senate on April 17, 1986, S. 426 provided an affirmative response to each of these questions and I am pleased to note that through the efforts of the Senate conferees, the agreement of the conference committee retains that needed response.

This measure is acceptable to me and I would urge immediate adoption by the Senate. It is the product of a long and hard process and I am proud of the part my subcommittee played in bringing this measure to the Senate and the Nation.

Mr. President, this is a good agreement. However, before the Senate approves the conference report, as I am sure that my colleagues will, I would like to address some comments to the distinguished chairman of both the conference committee and the Senate Committee on Energy and Natural Resources, the senior Senator from the State of Idaho.

As the chairman will recall, grave concern was expressed by non-utility license holders, and here I am speaking of any license holder who is not engaged in the generation of hydroelectricity primarily for sale to another party, that their unique circumstances be recognized in this legislation. I am speaking of those individuals or companies who struck out on their own to develop a hydropower resource to serve their own domestic, commercial, or industrial needs.

As the chairman knows, this concern is addressed in both the legislative language and the statement of the managers. The amendments made to section 15 of the Federal Power Act by S. 426 specifically charge the Federal Energy Regulatory Commission to take into consideration the "applicant's own industrial facility and related operations, the effect on the operation of such facility or related operations, its workers, and the related community" in the context of the "need of the power" criteria in relicensing proceedings. The statement of the managers goes on to state that: "It is not intented that the term 'industrial' exclude domestic uses by the licensee." Does the chairman agree that this language directs the FERC to take into account during any relicensing proceeding involving a non-utility licensee, the particular circumstances surrounding that licensee?

Mr. McCLURE. Mr. President, if I may respond to the chairman of the Subcommittee on Water and Power.

His interpretation is correct. The language does mandate the FERC to consider the unique circumstances surrounding non-utility license holders.

I know that in my own State of Idaho, and I am aware that the situation is the same in my colleague's home State of Alaska as well as other States, that there are licensed projects that have been developed by non-utility licensees. The projects may serve facilities such as a paper or lumber mill, a factory or assembly plant, a commercial enterprise such as a dude ranch or hunting lodge, or the domestic needs of a farmer or rancher or family living in a remote area. In the case of industrial facilities, the FERC must consider the consequences of the loss of a project for an industrial facility including the impact on the community. And here I would note that domestic uses by the licensee are included within the scope of industrial uses in the statement of the managers in order to assuredly protect the diverse range of non-utility licensees. The recommendations of the conferees ensure that the needs of the non-utility license holder will be accommodated in any relicensing procedure.

Mr. MURKOWSKI. I thank the chairman for his assurance.

On another point, I note that the statement of the managers addresses concerns raised by the Metlakatla Indian Community of the Annette Island Indian Reservation in Alaska. The statement notes that: "The Federal Energy Regulatory Commission has previously ruled that the Metlakatla Indian Community is not required to be licensed pursuant to the Federal Power Act to use the lands within the Annette Island Indian Reservation, AK, for hydroelectric power development. Based on this understanding, it is the intent of the conferees that nothing in this act alters or affects that ruling."

Would the distinguished chairman have any further comment on the language in the report?

Mr. McCLURE. I think that the statement of the managers is without doubt a clear and concise direction that the act does not alter or affect the FERC's previous ruling.

Mr. MURKOWSKI. I thank the chairman for his observation.

As the chairman will recall from my remarks during the Senate's consideration of S. 426 and the meetings of the conferees, concern was expressed regarding the possible conditioning of a license by the Federal Energy Regulatory Commission to require the licensee to introduce new and exotic species into waterways that did not support those species. Many of the streams in Alaska with potential for hydroelectric development do not support naturally occurring fish populations. This is a result of the inhospitable habitat. I believe that it would be inappropriate for the FERC to require the introduction of fish in such streams as a condition of a license.

Mr. McCLURE. I wholeheartedly agree with the subcommittee chairman. As the conference report notes: "The conferees understand that there are areas in Alaska where there are no fish and have never been any. It is not the intent of the conferees that the amendments made by this act require the Federal Energy Regulatory Commission to condition licenses so as to introduce new and exotic species in such areas." This reasonable expression on the part of the conferees extends to similar circumstances in other States.

Mr. MURKOWSKI. I thank the distinguished chairman. The intent of the conferees is clear and my concerns have been addressed.

I would again compliment the distinguished chairman and ranking minority Member of the Committee on Energy and Natural Resources for their efforts in the committee, on the floor or the Senate when S. 426 was passed, in the conference committee, and once again, here on the floor of the Senate. Through each crucial step, they have exhibited the patience and knowledge so necessary in the compilation of such complex and far reaching legislation. They deserve the

thanks of the Senate and the gratitude of the consumer.

Mr. EVANS. It is my understanding that a savings clause has been added in section 17(a)(4) which assures that the authority of the Federal power marketing agencies to regulate access to transmission facilities owned by the Federal Government is left unaffected. This authority has recently been upheld against court challenges, and it is not the intent of this legislation to alter or diminish that authority in any fashion. Does the chairman agree with my understanding of the conferees' intent?

Mr. McCLURE. Yes.

Mr. EVANS. I would like to emphasize my understanding that these amendments, specifically section 10(a)(2), reflect the principle of cooperative management between Indian tribes, State and Federal regulators. These amendments grant the tribes a seat at the decisionmaking table, from which they will be able to protect their important jurisdictional interest in fishery and other natural resources issues. We have learned in the Pacific Northwest through the implementation of the Pacific Northwest Electric Power Planning and Conservation Act and the Pacific Salmon Treaty Act that the tribes are prepared to provide responsible and businesslike representation and contribute to rational and comprehensive decisionmaking.

Mr. McCLURE. I agree entirely with the remarks of the Senator from Washington and would like to state my strong belief that full and fair inclusion of Indian tribes in the discussion of matters that affect tribal resources is much to be preferred. It is my conviction that FERC should be responsive to recommendations it receives pursuant to section 10(a)(2). Section 10(a) is not intended to eliminate FERC's obligations to respond to appropriate recommendations.

Mr. EVANS. I appreciate the assurances from the distinguished Senator from Idaho. It is my further understanding that, with respect to section 10 of the conference agreement, Indian tribes that have submitted fish and wildlife recommendations would be permitted to participate in the process to resolve disputes between fish and wildlife agencies, the applicant, and FERC.

Mr. McCLURE. That is correct. The Commission's consideration of tribal views should be full and complete. Obviously, it is important that fish and wildlife dispute resolutions should be conducted in good faith among all parties to ameliorate the concerns of those interests directly affected by a project. The expensive litigation and other disruptions that now hinder licensing decisions can be reduced by allowing tribal representation and respecting tribal interests at the beginning and throughout the decision process.

Mr. STEVENS. Mr. President, I ask for adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

FEDERAL EMERGENCY MANAGEMENT ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate turn to the consideration of H.R. 5488, which deals with the Federal Emergency Management Act being held at the desk.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5488) to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes.

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

AMENDMENT NO. 3218

(Purpose: To amend the Disaster Relief Act of 1974)

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of Senator STAFFORD, the chairman of the full committee, and Senator LAUTENBERG.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for Mr. STAFFORD and Mr. LAUTENBERG proposes an amendment numbered 3218.

Mr. STEVENS. 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:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Disaster Relief Act Amendments of 1986".

SEC. 2. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 3. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and Local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 4. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and exent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected States, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives

and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 5. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 6. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 7. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 8. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 7(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 9. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: *Provided, however,* That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 10. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 7(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistnace if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: *Provided,* That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 11. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"Sec. 316. The attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression.

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, docu-

ments, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law."

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 7(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 11(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 7(1) of this Act, is further redesignated as section 314.

SEC. 12. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"Sec. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"Sec. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE"

"Sec. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

SEC. 13. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such

State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private non profit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided,* That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area."

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 11(c) and 12 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 12 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 14. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is unavailable, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government."

SEC. 15. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as redesignated by sections 11(c) and 12 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 16. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 11(c) and 12 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 17. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 18. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 19. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 11(c) and 12 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 20. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 21. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "major disaster relief and emergency";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 7(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word appears in section 307 (42 U.S.C. 5150), as redesignated by section 7(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 7(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) stiking "in emergencies or in major disasters" in the third sentence of paragraph (2) by section 12 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 12 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 11(c) and 12 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 22. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed by this Act or renumbered by this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 23. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect ninety days after the date of enactment of this Act or on the date on which the President, after consultation with State and local governments, publishes final rules and regulations relating to the definition of costs for which State and local governments may be reimbursed under the Disaster Relief Act of 1974 (as amended by this Act), whichever is later.

(b)(1) This Act and the amendments made by this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to the effective date of this Act.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by section 11(c) and 12 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions had not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population."

Mr. STEVENS. I ask for the adoption of the amendment.

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

The amendment (No. 3218) was agreed to.

Mr. LAUTENBERG. Mr. President, I rise in support of the request by the Senator from Vermont, the chairman of the Committee on Environment and Public Works, to amend H.R. 5488, as adopted by the House and substitute the Senate-passed legislation regarding disaster relief.

In April, the Federal Emergency Management Agency proposed regulations to drastically change the way States and localities are assisted in the aftermath of a natural disaster. For a number of years, the disaster relief program has been operated without congressional direction, because the Congress has not been able to agree on authorizing legislation. In the face of demands by the Office of Management and Budget to decrease costs, FEMA moved, by regulation, to alter the disaster relief rules.

FEMA proposed rules which would have, had they been in effect, led to the denial of Federal assistance in 61 of the last 111 declared disasters. FEMA proposed an arbitrary per capita ability-to-pay threshold for each State, below which no Federal assistance would be provided. In addition, FEMA proposed that localities pay 50 percent of the cost of recovery from a natural disaster instead of the current 25 percent.

Mr. President, the Congress has firmly rejected these regulations. Recently, I offered an amendment to the Federal-aid highway bill to reject these FEMA proposals. That amendment was accepted without objection.

We have the opportunity this year to lay to rest the questions of what is or is not Congress' intent in the operation of our Nation's disaster relief program. We can do that by passing a comprehensive disaster relief authorization. By doing that, we would give

stability to the program, flexibility to State and local governments and an end to a regulatory process which threatens to undermine the very purposes of the Federal Disaster Relief Program.

Mr. President, we are sending to the House a bill which accomplishes the comprehensive rewrite of the disaster relief program that is called for at this time. The bill we are sending to the House has the same basic purpose as the bill passed by the House. The bill does away with the FEMA regulations. The bill says that the administration may not rule States ineligible for assistance solely on the basis of per capita income. The bill says that FEMA may not drastically raise the cost-sharing of local government.

The bill which we will send to the House, which is identical to the amendment I offered on the highway bill, does more than reject the actions of FEMA. The bill makes a number of needed reforms in the Disaster Relief Program. Unlike the House bill, we do not just set the cost-sharing at 75 percent for public facility repair and debris removal. We allow, if a disaster has been particularly severe, for that assistance to be greater than 75 percent on behalf of the Federal Government.

This bill will authorize a hazard mitigation program through which local governments can receive assistance to buffer their communities from the hazards posed by future hurricanes, coastal storms and floods. This provision of the Senate bill is of particular interest to State and local governments including New Jersey.

Mr. President, the principal difference between the House and Senate approaches on this issue is the reimbursement of costs incurred by local governments. The House bill reimburses local governments for 75 percent of actual costs, while the Senate covers net costs. Legislation which I sponsored along with Senator HEINZ earlier this year conformed with the House approach. It was the Environment and Public Works Committee's position that the coverage of actual costs exposed the Federal Government to uncertain liabilities. In the interest of moving this legislation forward, I agreed to offer the committee's cost-sharing position as an amendment to the highway bill.

Mr. President, the House and Senate are not far apart in their basic interest of regaining congressional control over this program. I urge adoption of the amendment and hope that we can reach agreement on this matter before the Congress adjourns.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

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

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5488), as amended, was passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

MEASURE HELD AT THE DESK

Mr. STEVENS. Mr. President, I ask unanimous consent that once it is received from the House of Representatives, H.R. 5353, which deals with a land exchange in my State of Alaska, be held at the desk pending further disposition.

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

SPECIAL FOREIGN ASSISTANCE ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1917.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1917) entitled "An Act to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund [UNICEF] reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diphtheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizabled diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survival Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necesary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States,

Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $108,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing job creation, rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system; and

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States Embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NON-LETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggregate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with those rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objectives specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained in section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(6) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime. This subsection shall be deemed to satisfy the requirements of section 202 of that act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, incuding those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition for support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of proection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity.

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

"(A) Activities which would result in the conversion of forest lands to the rearin of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) OVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under

this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas."(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $18,189,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for that fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

The provisions contained in section H.R. 5577, as introduced in the House of Representatives on September 23, 1986, are hereby enacted.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), section 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) Section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of the Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Amend the title of the bill to read as follows: "An Act to promote immunization and oral rehydration in developing countries, to promote democracy in Haiti, to protect tropical forests and biological diversity in developing countries, to authorize increased funding for the Child Survival Fund and for international narcotics control assistance, and for other purposes.".

AMENDMENT NO. 3219

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendments with a further Senate amendment, and I send that amendment to the desk on behalf of Senator LUGAR.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. LUGAR, proposes an amendment numbered 3219.

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

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

Mr. STEVENS. Mr. President, I ask for the adoption of the amendment.

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

The amendment (No. 3219) was agreed to.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund (UNICEF) reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diptheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizable diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization

programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survival Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed to a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necessary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States, Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $100,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing foreign investment, job creation (especially in the private sector), rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERNMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system;

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti; and

(9) is encouraging private sector development.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States Embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NONLETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggregate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with these rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objectives specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained in section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to

their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(5) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime. This subsection shall be deemed to satisfy the requirements of section 202 of that Act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development.

"(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in

the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovermental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide, subject to obtaining the necessary appropriations, additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

"(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

"(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $21,750,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for that fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

(a) BOARD OF THE INTER-AMERICAN FOUNDATION.—Section 401(g) of the Foreign Assistance Act of 1969 (22 U.S.C. 290f.(g)) is amended by striking out "seven" in the first sentence and "Four" in the second sentence and inserting in lieu thereof "nine" and "Six", respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 120 days after the date of enactment of this Act.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), section 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of that Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Mr. President, I move that the Senate concur in the amendment of the House to the title of the bill (S. 1917), to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I move the Senate concur in the amendment of the House to the title.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alaska.

The motion was agreed to.

EMERGENCY WETLANDS RESOURCES ACT OF 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate turn to Calendar Order No. 994, S. 740, the Emergency Wetlands Resources Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 740) to extend until October 1, 1995, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources without amendment; and from the Committee on Environment and Public Works with an amendment to stirke out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Wetlands Resources Act of 1986".

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation, and economic well-being of all our citizens of the Nation;

(2) wetlands provide habitat essential for the breeding, spawning, nesting, migration, wintering and ultimate survival of a major portion of the migratory and resident fish and wildlife of the Nation; including migratory birds, endangered species, commercially and recreationally important finfish, shellfish and other aquatic organisms, and contain many unique species and communities of wild plants;

(3) the migratory bird treaty obligations of the Nation with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere require Federal protection of wetlands that are used by migratory birds for breeding, wintering or migration and needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(4) wetlands, and the fish, wildlife, and plants dependent on wetlands, provide significant recreational and commercial benefits, including—

(A) contributions to a commercial marine harvest valued at over $10,000,000,000 annually;

(B) support for a major portion of the Nation's multimillion dollar annual fur and hide harvest; and

(C) fishing, hunting, birdwatching, nature observation and other wetland-related recreational activities that generate billions of dollars annually;

(5) wetlands enhance the water quality and water supply of the Nation by serving as groundwater recharge areas, nutrient traps, and chemical sinks;

(6) wetlands provide a natural means of flood and erosion control by retaining water during periods of high runoff, thereby protecting against loss of life and property;

(7) wetlands constitute only a small percentage of the land area of the United States, are estimated to have been reduced by half in the contiguous States since the founding of our Nation, and continue to disappear by hundreds of thousands of acres each year;

(8) certain activities of the Federal Government have inappropriately altered or assisted in the alteration of wetlands, thereby unnecessarily stimulating and accelerating the loss of these valuable resources and the environmental and economic benefits that they provide; and

(9) the existing Federal, State, and private cooperation in wetlands conservation should be strengthened in order to minimize further losses of these valuable areas and to assure their management in the public interest for this and future generations.

(b) PURPOSE.—It is the purpose of this Act to promote, in concert with other Federal and State statutes and programs, the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere by—

(1) intensifying cooperative efforts among private interests and local, State, and Federal governments for the management and conservation of wetlands; and

(2) intensifying efforts to protect the wetlands of the Nation through acquisition in fee, easements or other interests and methods by local, State, and Federal governments and the private sector.

SEC. 3. DEFINITIONS.

For the purpose of this Act:

(1) The term "committees" means the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(2) The term "designated unit" means a unit of the National Wildlife Refuge System designated by the Secretary under section 201(a)(2).

(3) The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(4) The term "hydrophytic vegetation" means a plant growing in—

(A) water; or

(B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(5) The term "wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

TITLE I—EXTENSION OF WETLANDS LOAN ACT

SEC. 101. EXTENSION OF WETLANDS LOAN ACT.

(a) AVAILABILITY OF APPROPRIATIONS.—The first section of the Act entitled "An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands, and for other essential waterfowl habitat, and for other purposes", approved October 4, 1961 (16 U.S.C. 715k-3), is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1988".

(b) REPAYMENT PROVISIONS.—Section 3 of such Act (16 U.S.C. 715k-5) is amended by striking out the first three sentences.

TITLE II—REVENUES FOR REFUGE OPERATIONS AND THE MIGRATORY BIRD CONSERVATION FUND

SEC. 201. SALE OF ADMISSION PERMIT AT CERTAIN REFUGE UNITS.

(a) SALE OF ADMISSION PERMITS.—(1) Notwithstanding the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.), in order to provide additional revenues for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges—

(A) the Secretary of the Interior may, at units of the National Wildlife Refuge System designated by the Secretary under paragraph (2)—

(i) charge fees for admission permits; and

(ii) sell Golden Eagle passports and Golden Age passports; and

(B) the amounts collected by the Secretary as a result of the activities described in subparagraph (A) shall be distributed as provided in subsection (c).

(2) The Secretary shall designate a unit of the National Wildlife Refuge System for purposes of this Act if the Secretary determines, with respect to such unit, that—

(A) The level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons.

(B) There is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits.

(C) Imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the unit.

(b) EXCEPTIONS.—(1) The Secretary may not require an admission permit under subsection (a)(1) for entry by a person into a designated unit if such person is the holder of—

(A) a valid migratory bird hunting and conservation stamp issued under section 2 of the Act of March 16, 1934 (16 U.S.C. 718b) (commonly known as the Duck Stamp Act);

(B) a valid Golden Eagle Passport issued under section 4(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)(1)); or

(C) a valid Golden Age Passport issued under section 4(a)(4) of such Act.

(2) Permits for a single visit to any designated unit shall be made available by the Secretary of the Interior for a reasonable fee, but not to exceed $7.50. For purposes of this subsection, the term "single visit" means a more or less continuous stay within a designated unit by a person or group described in subsection (d). Payment of a single visit fee and issuance of a single visit permit shall authorize exits from and re-entries to a single designated unit for a period of from one to fifteen days. Such period shall be defined for each designated unit by the Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit.

(3) Special admission permits for uses such as group activities may be issued in accordance with procedures and at fees established by the Secretary.

(4)(A) The Secretary of the Interior shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, who is blind or permanently disabled if—

(i) such citizen or person applies for such permit; and

(ii) has been medically determined to be blind or permanently disabled for purposes of receiving benefits under Federal law.

(B) A permit under subparagraph (A) shall be issued without charge.

(5) A person may not be required to purchase an admission permit under subsection (a)(1) in order to travel by private noncommercial vehicle over any road or highway—

(A)(i) established as part of the National Federal Aid System (as defined in section 101 of title 23, United States Code); and

(ii) commonly used by the public as a means of travel between two places which are outside the designated unit; or

(B) to any land in which such person has a properly interest if such land is within any designated unit.

(c) DISTRIBUTION OF AMOUNTS COLLECTED.—Amounts collected from the sale of admission permits under this section and from fees collected at any unit of the National Wildlife Refuge System under subsections (b) and (c) of section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(b), (c)) shall be distributed as follows:

(A) Thirty per centum shall be available to the Secretary of the Interior until expended. The Secretary shall use such amount—

(i) first, to defray the cost of collection;

(ii) next, for operation and maintenance of the collecting unit; and

(iii) next, for operation and maintenance of all units within the National Wildlife Refuge System.

(B) Seventy percent shall be deposited into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (16 U.S.C. 718d).

(d) PERSONS ACCOMPANYING PERMITTEES.—A person who holds a stamp, passport, or permit described in subsection (b) shall be entitled to general entrance into any designated unit, along with—

(1) any persons accompanying such person in a single, private, noncommercial vehicle; or

(2) where entry to the area is by any means other than single, private, noncommercial vehicle, the person and any accompanying spouse, children, or parents.

(e) RESTRICTIONS.—A permit issued under this section is nontransferable. Such a permit may not authorize any uses for which fees are charged under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.).

(f) ESTABLISHMENT OF FEES; POSTING OF NOTICES.—(1) All fees established pursuant to this section shall be fair and equitable. In establishing such fees, the Secretary shall consider the following:

(A) The direct and indirect cost to the Government.

(B) The benefits to the permit holder.

(C) The public policy or interest served.

(D) The comparable fees charged by non-Federal public agencies.

(E) The economic and administrative feasibility of fee collection and other pertinent factors.

(2) The Secretary shall require that notice that a fee has been established under this section—

(A) be prominently posted at each designated unit and at appropriate locations in each such unit; and

(B) to the extent practicable, be included in publications distributed at such units.

(g) VOLUNTEERS.—The Director of the United States Fish and Wildlife Service may accept services of volunteers to sell admission permits under this section or to sell Golden Eagle and Golden Age Passports or Migratory Bird Hunting and Conservation Stamps. The Director may use funds appropriated or otherwise made available to the Service to cover the cost of any surety bond that may be required of a volunteer performing the services authorized under this subsection.

SEC. 202. PRICE OF MIGRATORY BIRD HUNTING AND CONSERVATION STAMP.

Section 2(b) of the Act of March 16, 1934 (16 U.S.C. 718(b)), is amended in the first sentence—

(1) by striking out "$7.50" and inserting in lieu thereof "$10.00";

(2) by striking out "any hunting year" and inserting in lieu thereof "hunting years 1987 and 1988, $12.50 for hunting years 1989 and 1990, and $15.00 for each hunting year thereafter,"; and

(3) by inserting "available for obligation and" before "attributable".

SEC. 203. TRANSFERS TO MIGRATORY BIRD CONSERVATION FUND.

Notwithstanding any other provision of law, an amount equal to the amount of all import duties collected on arms and ammunition, as specified in subpart A of part 5 of schedule 7 of the Tariff Schedules of the United States, shall, beginning with the next fiscal year quarter after the date of enactment of this Act, be paid quarterly into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (16 U.S.C. 718d).

TITLE III—STATE AND FEDERAL WETLAND ACQUISITION

SEC. 301. NATIONAL WETLANDS PRIORITY CONSERVATION PLAN.

(a) IN GENERAL.—The Secretary shall establish, and periodically review and revise, a national wetlands priority conservation plan which shall specify, on a region-by-region basis or other basis considered appropriate by the Secretary, the types of wetlands and interests in wetlands which should be given priority with respect to Federal and State acquisition.

(b) CONSULTATION.—The Secretary shall establish the plan required by subsection (a) after consultation with—

(1) the Administrator of the Environmental Protection Agency;

(2) the Secretary of Commerce;

(3) the Secretary of Agriculture; and

(4) [the chief executive officer of] each State.

(c) FACTORS TO BE CONSIDERED.—The Secretary, in establishing the plan required by subsection (a), shall consider—

(1) the estimated proportion remaining of the respective types of wetlands which existed at the time of European settlement.

(2) the estimated current rate of loss and the threat of future losses of the respective types of wetlands; and

(3) the contributions of the respective types of wetlands to—

(A) wildlife, including endangered and threatened species, migratory birds, and resident species;

(B) commercial and sport fisheries;

(C) surface and ground water quality and quantity, and flood control;

(D) outdoor recreation; and

(E) other areas or concerns the Secretary considers appropriate.

SEC. 302. REMOVAL OF RESTRICTION ON ACQUISITION.

Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a)(1)) is amended by striking out "national wildlife refuge areas under section 7(a)(5) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(5)) except migratory waterfowl areas which are authorized to be acquired by the Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715-715s)" and inserting in lieu thereof "national wildlife refuge areas under section 7(a)(4) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(f)(a)(4)) and wetlands acquired under section 304 of the Emergency Wetlands Resources Act of 1986".

SEC. 303. INCLUSION OF WETLANDS IN COMPREHENSIVE STATEWIDE OUTDOOR RECREATION PLANS.

Section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8) is amended—

(1) In subsection (d), by adding at the end thereof the following new paragraph:

"For fiscal year 1988 and thereafter each comprehensive statewide outdoor recreation plan shall specifically address wetlands within that State as an important outdoor recreation resource as a prerequisite to approval, except that a revised comprehensive statewide outdoor recreation plan shall not be required by the Secretary, if a State submits, and the Secretary, acting through the Director of the National Park Service, approves, as a part of and as an addendum to the existing comprehensive statewide outdoor recreation plan, a wetlands priority plan developed in consultation with the State agency with responsibility for fish and wildlife resources and consistent with the national wetlands priority conservation plan developed under section 301 of the Emergency Wetlands Resources Act or, if such national plan has not been completed, consistent with the provisions of that section";

(2) in subsection (e)(1), by inserting, in the first sentence thereof, after "For the acquisition of land, waters, or interests in land or waters" the following: ", or wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan"; and

(3) in subsection(f)(3), by adding at the end thereof the following: ": Provided, That wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired as suitable replacement property within that same State that is otherwise acceptable to the Secretary, acting through the Director of the National Park Service, shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion and shall be eligible without regard to location.".

SEC. 304. FEDERAL ACQUISITION.

The Secretary is authorized to purchase wetlands or interests in wetlands, which are not acquired under the authority of the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715-715s), consistent with the wetlands priority conservation plan established under section 301.

SEC. 305. RESTRICTION ON USE OF EMINENT DOMAIN IN ACQUISITIONS.

The powers of condemnation or eminent domain shall not be used in the acquisition of wetlands under any provision of this Act where such wetlands have been constructed for the purpose of farming or ranching, or result from conservation activities associated with farming or ranching.

TITLE IV—WETLANDS INVENTORY AND TREND ANALYSIS

SEC. 401. NATIONAL WETLANDS INVENTORY PROJECT.

(a) IN GENERAL.—The Secretary, acting through the Director of the United States Fish and Wildlife Service, shall continue the National Wetlands Inventory Project and shall—

(1) produce, by September 30, 1988, National Wetlands Inventory maps for the areas that have been identified by the Service as top priorities for mapping, including—

(A) the entire coastal zone of the United States;

(B) floodplains of major rivers; and

(C) the Prairie Pothole region;

(2) produce, by September 30, 1998, National Wetlands Inventory maps for those portions of the contiguous United States for which final maps have not been produced earlier;

(3) produce, as soon as practicable, National Wetlands Inventory maps for Alaska and other noncontiguous portions of the United States; and

(4) produce, by September 30, 1990, and at ten-year intervals thereafter, reports to update and improve the information contained in the report dated September 1982 and entitled "Status and Trends of Wet-

lands and Deepwater Habitat in the Coterminous United States, 1950's to 1970's".

(b) NOTICE.—The Secretary shall notify the appropriate State and local units of government at such time as he proposes to begin map preparation under subsection (a) in an area. Such notice shall include, but is not limited to, the identification of the area to be mapped, the proposed schedule for completion, and the identification of a source for further information.

SEC. 402. REPORTS TO CONGRESS.

(a) IN GENERAL.—The Secretary, in consultation and cooperation with the Secretary of Agriculture, shall prepare and submit to the committees—

(1) by March 30, 1987, a report regarding the status, condition, and trends of wetlands in the lower Mississippi alluvial plain and the prairie pothole regions of the United States; and

(2) by September 30, 1987, a report regarding trends of wetlands in all other areas of the United States.

(b) CONTENTS OF REPORTS.—The reports required under subsection (a) shall contain—

(1) an analysis of the factors responsible for wetlands destruction, degradation, protection and enhancement;

(2) a compilation and analysis of Federal statutory and regulatory mechanisms, including expenditures, financial assistance, and tax provisions which—

(A) induce wetlands destruction or degradation; or

(B) protect or enhance wetlands;

(3) a compilation and analysis of Federal expenditures resulting from wetlands destruction, degradation, protection or enhancement;

(4) an analysis of public and private patterns of ownership of wetlands;

(5) an analysis of the environmental and economic impact of eliminating or restricting future Federal expenditures and financial assistance, whether direct or indirect, which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

(A) public works expenditures;

(B) assistance programs such as price support programs, commodity loans and purchase programs and disaster assistance programs;

(C) soil conservation programs; and

(D) certain income tax provisions;

(6) an analysis of the environmental and economic impact of failure to restrict future Federal expenditures, financial assistance, and tax provisions which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

(A) assistance for normal silviculture activity (such as plowing, seeding, planting, cultivating, minor drainage, or harvesting for the production of fiber or forest products);

(B) Federal expenditures required incident to studies, evaluations, design, construction, operation, maintenance, or rehabilitation of Federal water resource development activities, including channel improvements;

(C) the commodity loans and purchases program and cotton, feed grain, wheat, and rice production stabilization programs administered by the Department of Agriculture; and

(D) Federal expenditures for the construction of publicly owned or publicly operated highways, roads, structures, or facilities that are essential links in a larger network or system; and

(7) recommendations for the conservation of wetlands resources based on an evaluation and comparison of all management alternatives, and combinations of management alternatives, such as State and local actions, Federal actions, and initiatives by private organizations and individuals.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. MIGRATORY BIRD TREATY ACT.

Section 6(b) of the Act of July 3, 1918 (16 U.S.C. 707(b)) is amended by deleting "shall" the first place it appears therein and by inserting in lieu thereof "shall knowingly".

AMENDMENT NO. 3220

(Purpose: To establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana)

Mr. STEVENS. Mr. President, on behalf of Senators CHAFEE and MITCHELL, 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 Alaska [Mr. STEVENS], on behalf of Mr. CHAFEE and Mr. MITCHELL, proposes an amendment numbered 3220.

Mr. STEVENS. 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:

On page 43, after line 20, insert the following:

SEC. 502. BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE.

(a) PURPOSES OF REFUGE.—The purposes of the Bayou Sauvage Urban National Wildlife Refuge are—

(1) to enhance the populations of migratory, shore, and wading birds within the refuge;

(2) to encourage natural diversity of fish and wildlife species within the refuge;

(3) to protect the endangered and threatened species and otherwise to provide for the conservation and management of fish and wildlife within the refuge;

(4) to fulfill the international treaty obligations of the United States respecting fish and wildlife;

(5) to protect the archeological resources of the refuge;

(6) to provide opportunities for scientific research and environmental education, with emphasis being given to the ecological and other values of wetlands; and

(7) to provide opportunities for fish and wildlife oriented public uses and recreation in an urban setting. (b) Acquisition and Establishment of Refuge.—

(1) ACQUISITION.—Within four years after the effective date of this section the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire the approximately nineteen thousand acres of lands and waters, and interests therein, located in Orleans Parish, Louisiana, that are depicted on the map entitled "Bayou Sauvage Urban National Wildlife Refuge", dated September 15, 1986, and on file at the United States Fish and Wildlife Service, Department of the Interior. The lands and waters, and interests therein, acquired under this paragraph comprise the Bayou Sauvage Urban National Wildlife Refuge. The acquisition shall be made through donation, purchase with donated or appropriated funds, or exchange, or through any combination of the foregoing.

(2) ESTABLISHMENT.—At such time as sufficient lands and waters, and interests therein, have been acquired under paragraph (1) to constitute an initial area that can be administered to carry out the purposes set forth in subsection (a), the Secretary shall establish the Bayou Sauvage Urban National Wildlife Refuge by publication of notice to that effect in the Federal Register.

(3) BOUNDARY ADJUSTMENTS.—The Secretary may make such adjustments with respect to the boundary of the Bayou Sauvage Urban National Wildlife Refuge as may be necessary to facilitate the acquisition of lands and waters, and interests therein, for the refuge and to facilitate the administration of the refuge.

(c) ADMINISTRATION OF REFUGE.—The Secretary shall administer all lands and waters, and interests therein, acquired under subsection (b) in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) to carry out the purposes set forth in subsection (a). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive environmental education as he considers appropriate to carry out such purposes. Within two years after the effective date of this section, the Secretary shall complete a master plan for the development of the Bayou Sauvage Urban National Wildlife Refuge.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Interior—

(1) from funds not otherwise appropriated from the Land and Water Conservation Fund, such sums as may be necessary for the acquisition of lands and waters, and interests therein, for the Bayou Sauvage Urban National Wildlife Refuge; and

(2) $5,000,000 for the development of the refuge.

The moneys appropriated under subparagraphs (1) and (2) shall remain available until expended.

(e) EFFECTIVE DATE.—This section takes effect on the later of the date of enactment of this Act or October 1, 1986.

BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE

Mr. CHAFEE. Mr. President, this amendment is identical to S. 2741, which was introduced last month by Senators JOHNSTON and LONG. It would authorize the acquisition and establishment of an approximately 19,000-acre national wildlife refuge on the eastern edge of New Orleans. The purposes of this refuge would be to maintain and enhance the fish and wildlife values of the area, to protect the area's archeological resources, and to provide opportunities for scientific research, environmental education, and fish and wildlife-oriented public uses.

The area identified for protection under this amendment is a wetland system that encompasses a rich diversity of natural communities and native species which deserve rigorous protection. The proposed refuge site includes coastal live-oak woodlands, fresh, in-

termediate, and brackish marshes, and bottomland hardwoods. The area also includes two of the three known locations in Louisiana of a rare aquatic plant, potamogeton perfloiatus.

Additionally, the area has been identified as among the best remaining habitat for waterfowl in southeast Louisiana. The area's freshwater marshes may host up to 40,000 ducks, geese, and other migratory birds during the winter months. Up to 340 species of shorebirds, wading birds, waterbirds, raptors and perching birds can be found within the area's wide variety of habitats. Alligator, muskrat, and mink numbers also are very high in the area. The endangered bald eagle and peregrine falcon are occasional visitors.

This refuge also will provide protection from hurricanes for the city of New Orleans, pollution control for Lake Ponchatrain, and nurseries for many species of marine life, such as fish, crabs, and shrimp.

The proposed refuge lies within the boundaries of the city of New Orleans. This proximity to an urban center of more than 1 million people will enable the refuge to become a major outdoor classroom for environmental education. The refuge's location also promises new recreation opportunities for residents and visitors in the New Orleans area.

The 19,000 acres authorized for inclusion in the National Wildlife Refuge System represents fully 1 percent of Louisiana's coastal marshland. These extremely fragile and highly productive wetlands are being lost at the rate of 35,000 acres per year. Establishment of the proposed refuge, then, will help stem the pace of this wetlands destruction and offset the huge resulting economic and ecological losses.

The land in question is currently owned by South Point, Inc., a subsidiary of Merrill Lynch. Merrill Lynch planned to develop the property or sell it to a developer. Environmentalists expressed concerns that the wetlands should be preserved. Representatives of Merrill Lynch met on several occasions with Government officials and members of the environmental community, and the result of these negotiations was the proposal for a bargain purchase of the 19,000 acres to establish the Bayou Sauvage Urban National Wildlife Refuge.

Another 4,700 acres of land owned by South Point would be given to the Conservation Fund, an offspring of the Nature Conservancy, for the purpose of development. The development of these adjacent lands would be undertaken in a way that would preserve the natural resources of the area as much as possible. The proceeds from the development would be applied to management of the refuge and to an education program for the schoolchildren of New Orleans.

The administration, although acknowledging the significant wildlife and other benefits of the proposed refuge, opposed this measure at a hearing before the Subcommittee on Environmental Pollution due to budgetary constraints and because the Bayou Sauvage proposal has not undergone a review by the Fish and Wildlife Service to ascertain the relative importance of this wetland area as compared with other lands available for incorporation into the National Wildlife Refuge System. However, the Nature Conservancy has called the protection of the Bayou Sauvage area "a prudent step in wise resource conservation." The National Audubon Society and National Wildlife Federation also have testified in support of establishing this refuge.

Mr. President, I urge my colleagues to join Senators JOHNSTON, LONG, MITCHELL, and myself in supporting this amendment. In doing so you will be helping to protect a vital part of our coastal environment in a place where a great number of people will be able to appreciate and learn from its preservation.

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

The amendment (No. 3220) was agreed to.

Mr. LONG. Mr. President, the Senate has just taken action which is a positive step toward the development of an urban national wildlife refuge in east New Orleans. In adopting the Chafee amendment to S. 740, the Emergency Wetlands Resource Act, the Senate has indicated its support for the establishment of an urban national wildlife refuge.

Mr. President, as an original cosponsor of S. 2741, which is the text of the amendment offered by my colleague, Senator CHAFEE, I am excited about the prospects of this urban wildlife refuge becoming a reality. The House of Representatives has given its consent to the establishment of the Bayou Sauvage Urban National Wildlife Refuge.

The proposed refuge will consist of approximately 19,000 acres of land in the eastern part of the city of New Orleans. The establishment of the refuge will offer a unique opportunity to preserve an extensive area of high value wetlands within a large and growing urban area.

The present owners of this land, South Point, Inc., a subsidiary of Merrill Lynch, planned a major development in this area. However, the development proposal was widely opposed by the conservation community at both the local and national levels.

In view of the opposition to the development proposal, the owners of the property began discussions with local officials and the conservation community about the development of an urban wildlife refuge. The legislation I cosponsored with my friend and colleague from Louisiana, BENNETT JOHNSTON, is the culmination of these discussions and agreements.

Mr. President, the Bayou Sauvage area is truly unique in having such a diversity of fish, wildlife, and habitat in close proximity of New Orleans.

This area is home to more than 40,000 wintering waterfowl annually and to thousands of wading and shore birds year-round. It is home to a sizable deer herd, otters, raccoons, other fur bearers, and thousands of alligators. In addition, it serves as an important nursery and growth area for shrimp, crabs and many species of fish.

The establishment of the Bayou Sauvage Urban National Wildlife Refuge will be a welcome addition to the National Wildlife Refuge System, even if it were not located within the boundaries of a major urban center.

Being within minutes of downtown New Orleans gives this refuge the potential to become a model urban national wildlife refuge, and as such one of the most important refuges in the national system.

It will not only be a refuge for fish and wildlife but a place for people to enjoy a pristine and natural heritage. Mr. President, this Nation is beginning to realize the importance and values of wetlands such as the Bayou Sauvage area to the local and national economy and as an important entity for a quality of life for people.

In conclusion, Mr. President, this tract of land represents a large area of coastal Louisiana's wetlands which are being lost in Louisiana alone at a rate of 55 square miles or 35,200 acres per year. This represents an economic loss of $14 million per year and immeasurable loss of fish and wildlife.

Future generations who will enjoy both the continued esthetic and economic benefits of such a refuge will consider us to have been people of vision. Let me again say how pleased I am that we have acted positively in enacting legislation to establish the Bayou Sauvage Urban National Wildlife Refuge. I would like to thank my colleagues who were so helpful in this endeavor.

AMENDMENT NO. 3221

(Purpose: To amend S. 740, the Emergency Wetlands Resources Act of 1986)

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of myself and my colleague from Alaska, Senator MURKOWSKI, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself and Mr. MURKOWSKI, proposes an amendment numbered 3221.

Mr. STEVENS. 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:

S. 740, the Emergency Wetlands Resources Act of 1986, is amended by—

(a) inserting, on page 31 between lines 23 and 24, the following new paragraph:

"(5) A person may not be required to purchase an admission permit under subsection (a)(1) for entrance or admission to a unit of the National Wildlife Refuge System created, expanded, or modified by Public Law 96-487.";

(b) striking the period at the end of subparagraph (c)(A)(iii) of section 201 and inserting in lieu thereof ", except those units created, expanded, or modified by Public Law 96-487.".

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

The amendment (No. 3221) was agreed to.

AMENDMENT NO. 3222

Mr. STEVENS. Mr. President, I send to the desk an amendment on behalf of Senator MCCLURE to the Environmental Committee substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], on behalf of Mr. MCCLURE, proposes an amendment numbered 3222.

Mr. STEVENS. 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:

1. On page 27, strike all of lines 1 through 4 and insert in lieu thereof: "(1) The term 'Committees' means the Committee on Merchant Marine and Fisheries and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate.

2. On page 29, Line 4, delete "and".

3. On page 29, line 6, delete "and" and after line 6 insert in lieu the following: "(iii) issue at no charge lifetime admission permits as authorized in section 4(a)(5) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4-4601-11).".

4. On page 30, line 7, delete "or".

5. On page 30, line 9, strike "Act." and insert "Act; or".

6. On page 30, after line 9, insert the following: "(D) a valid lifetime admission permits as authorized in section 4(a)(5) of such Act.".

7. On page 30, line 12, delete "$7.50." and insert "$3.00 for individuals or $7.50 per vehicle.".

8. On page 31, strike all of lines 1 through 11.

9. On page 31, line 12, strike "(5)" and insert (4)".

10. On page 38, line 20, delete "sion and shall be eligible without regard to location." and insert "sion.".

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

The amendment (No. 3222) was agreed to.

Mr. CHAFEE. Mr. President, the Emergency Wetlands Resources Act of 1986 provides four approaches to increase the acquisition and protection of wetlands. This bill: First, extends the Wetlands Loan Act and forgives repayment of the advances made to the migratory bird conservation "duck stamp" fund; second, raises additional revenues for deposit in the duck stamp fund; third, allows the land and water conservation fund to be used specifically for purchasing wetlands; and fourth, requires study and inventory of the Nation's wetlands.

Mr. President, this landmark legislation is the product of 4 years of work by members of the Environment and Public Works and Energy and Natural Resources Committees, the House Merchant Marine and Fisheries and Interior and Insular Affairs Committees, the administration, the States, and an extremely broad coalition of conservation organizations. I want to particularly thank Senators MCCLURE, WALLOP, JOHNSTON, and BUMPERS, and their staff for their extremely quick sequential review of S. 740 in the Energy and Natural Resources Committee, which allowed this bill to come to the floor before adjournment.

Our distinguished colleagues on the Energy and Natural Resources Committee recognize as do many of the rest of us that we can afford to delay no longer in our efforts to increase wetlands protection. Already, more than one-half of the 215 million acres of wetlands that once existed in the coterminous United States have been converted to upland areas. Estimates indicate that there was a net loss of 9 million acres of wetlands between the mid-1950's and mid-1970's. The greatest losses during that period occurred in Louisiana, Mississippi, Arkansas, North Carolina, North Dakota, South Dakota, Nebraska, Florida, and Texas. Unfortunately, the rate of wetland loss does not appear to have diminished over the last decade. The U.S. Fish and Wildlife Service estimates that "we are continuing to lose wetlands at the annual pace of nearly one-half million acres, an area approximately 12 times the size of the District of Columbia."

The Nation's wetlands provide valuable goods and services for the American people. The Department of the Interior has stated that it is "well established that the loss of wetlands is one of the most serious environmental problems facing the Nation today, with far-reaching implications not only for fish and wildlife resources but also for outdoor recreation, business, agriculture, and flood control."

Recognition of the need for wetlands conservation first became widespread because of international concern for migratory birds which depend upon wetlands for survival. As far back as 1916, the United States and Great Britain—acting for Canada—negotiated the "Convention for the Protection of Migratory Birds." This Convention was the first of five treaties that established an international, cooperative effort to conserve migratory birds and their habitats. These treaties provide the foundation for national laws that grant the Federal Government the authority and responsibility to manage migratory birds and their habitats. In 1983, the U.S. Supreme Court confirmed that "[t]he protection of migratory birds has long been recognized as a national interest of very nearly the first magnitude. * * *" *North Dakota* v. *United States*, No. 81-773 (Mar. 7, 1983).

A Federal role in the acquisition of wetland habitats for migratory birds has been recognized by Congress for many years. The enactment of the Migratory Bird Conservation Act in 1929 and the Migratory Bird Hunting and Conservation Stamp Act in 1934 established the foundation of our present Wetlands Acquisition Program.

The Migratory Bird Conservation Act improved our ability to meet our treaty obligations and provided authority for the acquisition of migratory bird habitat. Funding for this acquisition is provided by section 4 of the Migratory Bird Hunting and Conservation Stamp Act in the form of the permanent appropriation from the migratory bird conservation fund, which contains moneys generated from the sale of these so-called duck stamps and certain surplus federal property. Areas acquired are incorporated into the National Wildlife Refuge System.

In the quarter century following enactment of these two pivotal laws, wetland acquisition increased dramatically. Nevertheless, in 1959 the U.S. Fish and Wildlife Service and the State fish and wildlife agencies jointly determined that protection and management of 12.5 million acres of waterfowl habitat in the coterminous United States was necessary to maintain existing waterfowl populations. To achieve this goal, the Fish and Wildlife Service needed to acquire an additional 3.8 million acres and the States an additional 2.5 million acres.

In 1961 Congress passed the Wetlands Loan Act to accelerate Federal Acquisition of migratory waterfowl habitat. This law, as amended, authorizes the appropriation of $200 million as a loan against future revenues from the sale of duck stamps. At the present cost of $7.50 per stamp, revenues are approximately $14.4 million

per year. The authorization, of which about $190 million has been appropriated, expires on September 30, 1986, and, beginning October 1, 1986, 75 percent of the revenues raised from the sale of duck stamps must be used to repay the loan. Only about $3.5 million would then remain available on an annual basis to purchase the necessary wetlands. The legislation before us today, therefore, is needed in order to avoid a decrease of this magnitude in a vital Wetlands Acquisition Program.

Using duck stamp funds and funds advanced against future stamp sales under the Wetlands Loan Act, the Fish and Wildlife Service purchased in fee title or easement approximately 1.9 million acres toward their goal from 1959 to 1977. Acquisition of the remaining 1.9 million wetland acres for conservation of migratory birds was to be completed during the 10-year period between fiscal year 1977 and fiscal year 1986. Over the past decade, however, the Fish and Wildlife Service will have acquired less than 25 percent of the 1.9 million acres of waterfowl habitat identified for Federal acquisition. Similarly the States have acquired only about 20 percent of the 2.5 million acres identified for State acquisition.

In May 1986 the United States and Canada signed the "North American Waterfowl Management Plan," which describes the actions and size of the task now believed necessary to achieve waterfowl population goals that will satisfy current public demand. The plan calls for the acquisition, protection, or improvement of approximately 1.9 million acres in the United States and 3.7 million acres in Canada. Protection and improvement of more than 1 million acres of mallard and pintail breeding habitat is needed in the pothole area of the northcentral United States at an estimated cost of $237 million. In the lower Mississippi River-gulf coast region, the plan estimates that 686,000 acres of wintering habitat are needed, and roughly 80,000 acres of additional wintering habitat are needed in the Central Valley of California. The cost to achieve these wintering habitat protection and improvement goals would probably exceed $217 million. Finally, black ducks need an additional 50,000 acres of migration and wintering habitat along the east coast of the United States and 10,000 acres in the Great Lakes-St. Lawrence lowlands in the United States, at an estimated cost of $23 million.

Thus, the total cost for habitat protection in the United States identified by the North American Waterfowl Management Plan approaches $500 million. The required waterfowl habitat protection and improvement in Canada may reach $1 billion. The cost of providing this habitat protection will have to be shared by governmental and nongovernmental entities in the United States and Canada. Federal and State spending alone won't do the job.

The Emergency Wetlands Resources Act of 1986 will, however, provide a guarantee of approximately $40 million per year for Federal acquisition of wetlands. Of this approximately $30 million will be raised from user fees and $10 million will come from the current duties paid on imported arms and ammunition. Two years ago Congress took a similar approach by putting the duties paid on fishing and boating equipment into the Wallop-Breaux Fund for sport fisheries managment. The Wetlands Act also provides authority for Congress to appropriate additional State and Federal wetland acquisition moneys from the land and water conservation fund, which presently authorizes $900 million each year, primarily from offshore oil and gas revenues, for park and refuge purchases.

The increased authority for Federal acquisition of wetlands under the Land and Water Conservation Fund Act provided by this bill should not force the existing appropriations for land acquisition to be divided further. Annual spending from the fund historically has been far less than the authorized $900 million. Rather than forcing reductions in the amount spent for parks, refuges, forests, and endangered species, this bill should serve to underline the tremendous need for increased appropriations from the land and water fund.

Mr. BENTSEN. Mr. President, it has been my pleasure to cosponsor, along with Senators CHAFEE, STAFFORD, and MITCHELL, this bipartisan substitute for S. 740, the emergency wetlands resources bill, which we introduced on March 26, 1985. This comprehensive proposal addresses the Nation's serious problem of wetlands depletion in several ways and is the result of over 1 year of extensive negotiation among Members of Congress, administration officials, and outside interest groups.

According to the Department of the Interior's own estimates, Texas is among those States which experienced the most significant loss in wetlands habitat from the 1950's to 1970's. Therefore, I have been happy to support legislation designed to halt this decline in a fair and equitable way.

A few months after the introduction of S. 740, serious concerns were raised that certain provisions in the bill might give the Federal Government too much control over the use and disposition of privately owned lands. Refinements were made to the measure, and agreement was reached regarding language to be included in the committee's report on the bill. I appreciate very much the efforts of Senators CHAFEE and MITCHELL in negotiating the compromises in the measure before us today.

As originally introduced, S. 740 provided that $75 million be transferred annually from the land and water conservation fund to be used specifically for wetlands acquisition by the States and the Federal Government. Due to budgetary concerns, the administration objected to the annual transfer of a specific amount of money from the LWCF for wetlands acquisition; and that provision, along with its establishment of a new wetlands conservation fund, has been dropped from the legislation.

The substitute provides substantial new improvements for an accelerated program of wetlands acquisition. These include removing the prohibition against land and water conservation fund moneys being used for the purchase of migratory bird habitat, increasing revenues into the migratory bird conservation fund by raising the price of duck stamps to $15 by 1991, paying into the fund an amount equal to the import duties collected on arms and ammunition during each fiscal year, and authorizing the Secretary of the Interior to establish entrance fees at suitable national wildlife refuges.

Some interested parties expressed concern that Federal or State governments might use the powers of condemnation or eminent domain to take lands from unwilling sellers. Therefore, this bill includes language not found in current law stating that the powers of condemnation and eminent domain will not be used to acquire any wetlands constructed for the purposes of farming or ranching. The committee's report on S. 740 directs the Interior Department to continue its present policy of using condemnation proceedings only in unusual cases when damages to wetlands resources cannot otherwise be prevented, or in cases where necessary to clear title from a willing seller.

Concerns were also expressed regarding the definition of the term "wetlands" that appeared in the original version of S. 740. The substitute's definition of the term is more precise and is identical to that contained in the "swampbuster" provisions of the 1985 farm bill.

The bill calls for an accelerated completion of the national wetlands inventory. Some objections have been raised to this provision on the grounds that the service is using erroneous procedures in its classification of wetlands. However, the inventory will be completed regardless of whether or not S. 740 is enacted into law. If the methodology used in compiling the maps is flawed, the problem must be addressed; I welcome the opinions of interested parties on how the inventory might be improved. In its report on this measure, the Senate Committee

on Environment and Public Works directs the Secretary of the Interior to consult with other Federal agencies regarding proposed designations of wetlands and to make draft inventory maps available for public inspection in local Federal Government offices.

The substitute retains the provision in the original S. 740 calling for the Secretary of the Interior to report to Congress on the status of wetlands and to examine factors, such as Federal policies, contributing to their decline. However, this section has been modified to require the Secretary of the Interior to consult and cooperate with the Secretary of Agriculture in making this report and to take into consideration factors responsible for wetlands protection and enhancement. This was done in order to assure a balanced approach to the Federal study and report.

This measure provides a balanced, responsible approach to address the critical problem of wetlands loss. I hope that before this Congress adjourns we will be able to present to the President a comprehensive proposal that demonstrates the commitment of both Houses and both parties to protect this valuable resource. I urge my colleagues to vote in favor of this important legislation.

Mr. MITCHELL. Mr. President, I am pleased to join Senator CHAFEE as a sponsor of the Emergency Wetlands Conservation Act. This measure will contribute substantially to the acquisition and protection of one of our Nation's important resources—wetlands.

Few Americans would disagree that wetlands are of national importance. Waterfowl and other water birds are extremely dependent on wetlands throughout their life cycles, as are many fur-bearing animals. It is estimated that nearly two-thirds of the fish caught by American commercial fishermen are dependent on estuarine areas and their associated wetlands. These areas also buffer the effects of storms, purify water, aid in ground water recharge and provide substantial flood control.

The State of Maine benefits enormously from its wetlands. Fish and wildlife nurtured by wetlands provide recreational hunting, fishing and trapping opportunities. These activities make an important contribution to the State's economy.

Wetlands are also vital to the commercial fish and shellfish industry in Maine. Wetland tidal flats represent 48 percent of the intertidal habitats of Maine. Fisheries of the tidal flats rely heavily on organic material from adjacent coastal, estuarine, riverine, and salt marsh habitats. As a result, many of Maine's commercial fish species, including herring, mackerel, smelt, hake, scup, menhaden, flounder, cod, haddock, and perch are dependent upon wetlands for various stages in their life cycles.

The rate of destruction of wetland areas is truly alarming. Each day this Nation loses almost 1,000 acres of wetlands to dredging, filling, draining and impoundment. We are losing wetlands at a rate of 458,000 acres a year. More than 100 million acres—nearly half of the wetlands once found in the lower 48 States—are now gone. We must as a nation renew our efforts to save these precious resources.

The Emergency Wetlands Conservation Act would assist the Federal Government and the States in meeting wetland acquisition goals. The bill would authorize the Secretary of the Interior to charge entrance fees at certain units of the National Wildlife Refuge System. (Holders of migratory bird hunting and conservation stamps—"duck stamps"—would be exempt from the entrance fee. This fee, though nominal, would provide nonhunters who enjoy wildlife, such as birdwatchers and nature photographers, an opportunity to assist in acquiring wildlife habitat. The fee would raise from $3.5 to $5 million with which to acquire wetlands.

In addition, the bill would gradually, over 6 years, increase the price of duck stamps from $7.50 to $15. Hunters, since 1934, have purchased migratory bird hunting and conservation stamps—or duck stamps. The sale of these stamps has raised more than $225 million for the acquisition of over 3 million acres of waterflow habitat. Hunters have always been willing to pay their share for wildlife management and conservation and have indicated a willingness to pay more to increase wetland acquisition as long as others are also willing to contribute. The increase in the duck stamp would raise an additional $14.5 million annually.

The legislation would direct that duties on imported arms and ammunitions be used for wetland acquisition, as well. This provision would raise $9.5 million annually.

I am very pleased that the bill would also establish the Bayou Sauvage Urban National Wildlife Refuge in New Orleans, LA.

Bayou Sauvage is unique among wetland areas in both the richness of its natural beauty and its accessibility to the public. Encompassing approximately 19,000 acres, the Bayou Sauvage area will protect thousands of species of waterfowl, fur-bearers, alligators and shell-fish. Because Bayou Sauvage is only minutes from downtown New Orleans, it will also provide unprecedented public access. Bayou Sauvage has the opportunity to become a model wetland refuge by both conserving an invaluable resource and providing infinite educational and other uses to residents and visitors of southeastern Louisiana.

I commend my colleagues Mr. JOHNSTON and Mr. LONG for their efforts to establish Bayou Sauvage and give this provision my complete support; it is an important addition to the Emergency Wetlands Conservation Act.

Mr. President, for too long this country has neglected the value of its wetland resources. The Emergency Wetlands Conservation Act represents an important step in the prevention of the disappearance of American wetlands. I urge my colleagues to give it their support.

Mr. STEVENS. Mr. President, I want to make it clear that the amendments were all to the substitute.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

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

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

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

The title was amended so as to read "A bill to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, and for other purposes."

Mr. STEVENS. 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.

WETLANDS LOAN ACT EXTENSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to Calendar order No. 966, which is the Wetlands Loan Act extension, H.R. 4531.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4531) to extend the Wetlands Loan Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

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

AMENDMENT NO. 3223

(Purpose: To provide for the conveyance of the Berlin National Fish Hatchery to the State of New Hampshire)

Mr. STEVENS. Mr. President, on behalf of Senator CHAFEE, of Rhode Island, 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 Alaska [Mr. STEVENS], on behalf of Mr. CHAFEE and Mr. HUMPHREY, proposes an amendment numbered 3223.

Mr. STEVENS. 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:

On page 3, after line 2, insert the following new section:

SEC. . CONVEYANCE OF FISH HATCHERY TO STATE OF NEW HAMPSHIRE.

Notwithstanding any other law, the Secretary of the Interior and the Secretary of Agriculture shall convey, without reimbursement, to the State of New Hampshire no later than December 31, 1986, all of the right, title, and interest including the water rights, of the United States in and to the fish hatchery property located in the northwest corner of Berlin township in the White Mountain National Forest, New Hampshire, and known as the Berlin National Fish Hatchery, consisting of 510 acres, more or less, of land together with any improvements and related personal property thereon. The property conveyed shall be used by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

Mr. CHAFEE. Mr. President, this amendment is offered on behalf of Senator HUMPHREY and myself. This amendment to H.R. 4531 would transfer the Berlin National Fish Hatchery from the U.S. Fish and Wildlife Service to the State of New Hampshire. If the property conveyed to New Hampshire for use by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program is ever used for any other purpose, then the title to the property reverts to the United States. I understand that this arrangement is acceptable to the U.S. Fish and Wildlife Service and the State of New Hampshire.

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

The amendment (No. 3223) was agreed to.

Mr. CHAFEE. Mr. President, H.R. 4531 extends the Wetlands Loan Act through fiscal year 1988; allows for additional appropriations to complete acquisition of Atchafalaya National Wildlife Refuge, LA; and clarifies the language of the Migratory Bird Hunting and Conservation Stamp Act relative to the Balanced Budget and Emergency Deficit Control Act of 1985.

Extension of the Wetlands Loan Act under section 1 of the bill is a pressing national priority. We passed the Wetlands Loan Act in 1961 to accelerate Federal acquisition of migratory waterfowl habitat. This law, as amended, authorizes the appropriation of $200 million as a loan against future revenues from the sale of duck stamps. At the present cost of $7.50 per stamp, revenues are approximately $14.4 million per year. However, the act's authorization, of which about $190 million has been appropriated, expired on September 30, 1986, and, beginning October 1, 1986, 75 percent of the revenues raised from the sale of duck stamps must be used to repay the loan. Only about $3.5 million would then remain available on an annual basis to purchase the necessary wetlands. This bill, H.R. 4531, therefore, is urgently needed in order to avoid a near shutdown of the Nation's wetlands acquisition efforts.

Using duck stamp funds and funds advanced against future stamp sales under the Wetlands Loan Act, the Fish and Wildlife Service purchased in fee title or easement approximately 1.9 million acres toward their goal from 1959 to 1977. Acquisition of another 1.9 million wetland acres for conservation of migratory birds was to be completed during the 10-year period between fiscal year 1977 and fiscal year 1986. Over the past decade, however, the Fish and Wildlife Service will have acquired less than 25 percent of the 1.9 million acres of waterfowl habitat identified for Federal acquisition. Similarly the States have acquired only about 20 percent of the 2.5 million acres identified for State acquisition. Clearly, we need to do a better job of meeting our goals.

In May 1986 the United States and Canada signed the "North American waterfowl management plan," which describes the actions and size of the task now believed necessary to achieve waterfowl population levels that will satisfy current public demand. The plan calls for the acquisition, protection, or improvement of approximately 1.9 million acres in the United States and 3.7 million acres in Canada. The total cost for habitat protection in the United States identified by the plan approaches $500 million. The required waterfowl habitat protection and improvement in Canada may reach $1 billion. The cost of providing this habitat protection will have to be shared by governmental and nongovernmental entities in the United States and Canada. Section 1 of H.R. 4531 at least will allow 100 percent of the duck stamp receipts—approximately $14 million—to continue to be used toward achievement of the goals of the plan.

Section 2 of H.R. 4531 makes technical changes in Public Law 98-458, which authorized establishment of the Atchafalaya National Wildlife Refuge, to facilitate acquisition of the refuge. The changes allow the Fish and Wildlife Service to alter the proposed boundaries of the refuge to incorporate those habitat areas that have been made available for acquisition and to use all funds provided under appropriations acts for acquisition of the refuge for that purpose.

The Atchafalaya National Wildlife Refuge legislation authorized the Secretary of the Interior to designate, with the concurrence of the State of Louisiana, lands and waters considered appropriate for a national wildlife refuge within the Atchafalaya basin. The lands were to be purchased with funds provided under Public Law 98-396, a supplemental appropriations bill for fiscal year 1984.

Since enactment of the refuge authorization legislation, the U.S. Fish and Wildlife Service has been negotiating with landowners in the Atchafalaya basin. The Service recently reached an agreement with a large landholding company which would provide for the acquisition of over 15,000 acres of wildlife habitat within the basin for approximately $12.4 million. Because some of the acreage to be purchased under this agreement falls outside the original area designated for acquisition and because additional funds are required to purchase the acreage, the legislation before us today is needed to clarify and facilitate establishment of the refuge.

Finally, section 3 of H.R. 4531 addresses potential technical problems relating to the Migratory Bird Hunting and Conservation Stamp Act, which were raised by passage of Gramm-Rudman-Hollings.

The technical change made by this bill in the Migratory Bird Hunting and Conservation ("Duck") Stamp Act specifies that the U.S. Fish and Wildlife Service is required to obligate only those duck stamp fund receipts which are available and that failure to obligate funds sequestered under Gramm-Rudman-Hollings does not require reduction in the price of the stamp. Under current law, 100 percent of the duck stamp receipts and Wetland Loan Act appropriations from a given year must be obligated by February 1 of the following year. Otherwise, the price of the duck stamp reverts to $5 from its current price of $7.50.

The fear is that the sequestration of some funds in the Migratory Bird Conservation Fund under the Gramm-Rudman-Hollings law could be characterized as a failure to obligate all available funds for that year and thereby require a reduction in the price of the stamp. Consequently, section 3 of H.R. 4531 clarifies the language of the Duck Stamp Act to leave no doubt that the Fish and Wildlife Service is required to obligate only those funds which are available and that failure to obligate sequestered funds does not require such a price reduction. Funds in the migratory bird conservation fund which are sequestered in any given fiscal year become available, in any

case, for obligation in subsequent fiscal years.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill was read a third time, and passed.

Mr. STEVENS. 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.

STATUS OF EMPLOYEES AND LIMITS ON CONTRIBUTIONS TO THE COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION OF THE UNITED STATES

Mr. STEVENS. Mr. President, I ask that the Senate now turn to the consideration of Calendar Order No. 354, S. 1779, which is my bill dealing with the Commission on the Bicentennial of the Constitution.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1779) to amend the Act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

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

AMENDMENT NO. 3234

(Purpose: To restrict licensing of the Commission logo to appropriate purposes)

Mr. BYRD. Mr. President, on behalf of Mr. METZENBAUM, 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 West Virginia [Mr. BYRD] for Mr. METZENBAUM proposes an amendment numbered 3234.

Mr. BYRD. 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:

On page 3, at line 15, after the word "logo," insert the following language:

"Such rules and regulations shall provide, among other things, that all projects, goods, and services as to which use of the logo is authorized shall be educational or commemorative, and shall relate to the bicentennial of the United States Constitution, the establishment of the Federal Government, or the Bill of Rights, and none of such projects, goods or services shall exploit the United States Constitution or the Bill of Rights. The purpose of the Commission in authorizing use of the logo shall not be primarily or exclusively to raise funds."

Mr. METZENBAUM. Mr. President, this amendment ensures that there will be no unseemly commercialization of the logo of the Bicentennial Commission. The bill under consideration authorizes the Bicentennial Commission to license the use of its logo. However, there is no guidance to the Commission as to what type of licensing is permissible. I believe it is appropriate to place reasonable limitations on the circumstances in which the logo can be licensed. In particular, it is important to prevent exploitation of the Bicentennial Commission logo for commercial ventures unrelated to the purpose and goals of the Commission.

This amendment ensures that all projects, goods, and services for which the bicentennial logo is authorized must have an educational or commemorative purpose and must relate to the bicentennial of the U.S. Constitution, the establishment of the Federal Government, or the Bill of Rights, and must not exploit the U.S. Constitution or the Bill of Rights. Any licensing of the logo must be done under circumstances in which the principal purpose is to recognize and encourage worthy projects which advance the goals of the Commission. While it is reasonable to expect that private parties who derive some commercial benefit from use of the logo should pay royalties to the Commission, the amendment makes clear that the purpose of Congress in empowering the Commission to license the logo is not to give it a means of raising revenue.

The Bicentennial Commission will undoubtedly promote a heightened appreciation of the Constitution and the remarkable series of events that led to its creation. This task is an important one for the Nation. I am certain the Commission will perform its responsibilities with skill and dedication.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The amendment (No. 3234) was agreed to.

Mr. STEVENS. Mr. President, I ask for third reading.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 701, which is H.R. 3559, the House companion bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3559) to amend the Act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska.

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

Mr. THURMOND. Mr. President, I strongly support H.R. 3559, legislation before the Senate which would enhance the effectiveness of the Commission on the Bicentennial of the U.S. Constitution. This legislation is very similar to S. 1779, which I introduced along with Senators STEVENS, KENNEDY, and HATCH.

In 1983, the Congress and the President, by enactment of Public Law 98-101, established the Bicentennial Commission to coordinate and encourage the celebration of the 200th anniversary of our great Constitution. Unfortunately, the Commission was not assembled as early as anticipated in that law, and was unable to meet for the first time until the summer of 1985.

Mr. President, it is now less than a year until we celebrate the Bicentennial. As one who is privileged to be a member of the Bicentennial Commission, I am aware of the enormous task which faces us in preparing for a meaningful celebration. At early meetings of the Commission, several proposed changes to Public Law 98-101 were discussed and endorsed by the membership. These changes would enable the Commission to more quickly and more ably prepare for the Bicentennial. The pending legislation contains most of those changes. Its major provisions would:

Allow the Commission to authorize the manufacture, reproduction, use, sale, or distribution of the official emblem of the Bicentennial, and to prescribe penalties for its unauthorized use.

Exempt from civil service regulations Commission staff paid from privately donated funds.

Raise the ceiling on the amount an individual can contribute to $250,000 per annum, and on the amount a corporation, partnership, or other business organization can contribute to $1 million per annum.

Extend the life of the Commission for 2 years, from 1989 to 1991.

Mr. President, I believe that the changes proposed in this legislation are important, especially given the shortness of time with which the Bicentennial Commission has to work. I hope that the Congress will enact this legislation to assist the Commission in its effort to make the Bicentennial a

momentous occasion in our Nation's history.

Mr. President, the amendment proposed by the distinguished Senator from Ohio, Senator METZENBAUM, is consistent with the intention of this legislation, as introduced. My colleagues on the Commission on the Bicentennial of the Constitution and I are in full agreement with Senator METZENBAUM that the logo of the Commission should be used only on educational or commemorative projects, goods, or services.

We also agree enthusiastically with the concern of Senator METZENBAUM that the bicentennial logo should not be used in any manner which would exploit the U.S. Constitution or the Bill of Rights.

We, therefore, are pleased to accept the amendment offered by Senator METZENBAUM.

Mr. STEVENS. Mr. President, I move to strike all after the enacting clause of the House bill and insert in lieu thereof the text of S. 1779.

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

Mr. STEVENS. Mr. President, I ask for the adoption of the bill.

The PRESIDING OFFICER. If there be no amendment to be offered, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The amendment was engrossed and the bill was read the third time.

The bill (H.R. 3559), as amended, was passed.

Mr. STEVENS. 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.

Mr. STEVENS. Mr. President, I ask unanimous consent that S. 1779 be indefinitely postponed.

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

NEBRASKA WILDERNESS ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 816.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 816) entitled "An Act to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. That this Act may be cited as the "Nebraska Wilderness Act of 1985".

TITLE I—WILDERNESS

SEC. 101. In furtherance of the purposes of the Wilderness Act of 1964, certain lands in the Nebraska National Forest, which comprise approximately eight thousand one hundred acres, as generally depicted on a map entitled "Soldier Creek Wilderness—Proposed", dated February 1985, are hereby designated wilderness and, therefore, as a component of the National Wilderness Preservation System, and shall be known as the Soldier Creek Wilderness.

ADMINISTRATION OF WILDERNESS

SEC. 102. (a) Subject to valid existing rights and the provisions of subsection (b), the wilderness area designated under section 101 shall be administered by the Secretary of Agriculture (hereinafter in this Act referred to as the "Sec- "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(b) In the administration of the wilderness in the State of Nebraska—

(1) grazing of livestock in wilderness areas established by this Act, if established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and section 108 of Public Law 96-560; and

(2) the Secretary is directed to review all policies, practices, and regulations of the Department of Agriculture regarding livestock grazing in national forest wilderness areas in Nebraska in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this Act.

MAPS AND DESCRIPTIONS

SEC. 103. As soon as practicable after the date of the enactment of this Act, the Secretary shall submit a map and legal description of the wilderness area designated by section 101 to the Committee on Energy and Natural Resources of the Senate and the Committee on Agriculture and the Committee on Interior and Insular Affairs of the House of Representatives. Such map and legal description shall have the same force and effect as if included in this Act, except that any clerical or typographical error in such map or legal description may be corrected. The Secretary shall place such map and legal description on file, and make them available for public inspection, in the office of the Chief of the Forest Service, Department of Agriculture.

WILDERNESS REVIEW CONCERNS

SEC. 104. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) the Congress has made its own review and examination of National Forest system roadless areas in the State of Nebraska and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Nebraska, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Nebraska;

(2) with respect to the National Forest System lands in the State of Nebraska, which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II), that review and evaluation shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary of Agriculture finds that conditions in a unit have significantly changed;

(3) areas in the State of Nebraska reviewed in such final environmental statement and not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976: Provided, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Nebraska are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Nebraska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

TITLE II—PINE RIDGE NATIONAL RECREATION AREA

DESIGNATION OF PINE RIDGE NATIONAL RECREATION AREA

SEC. 201. Certain lands in the Nebraska National Forest, Nebraska, which comprise approximately six thousand six hundred acres, as generally depicted on a map entitled "Pine Ridge National Recreation Area—Proposed", dated September 1986, are

hereby designated as the Pine Ridge National Recreation Area.

MAP AND DESCRIPTION

SEC. 202. As soon as practicable after enactment of this Act, the Secretary of Agriculture shall file a map and legal description of the national recreation area designated by this title with the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such map and description may be made by the Secretary. Such map and description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

ADMINISTRATION OF THE NATIONAL RECREATION AREA

SEC. 203. (a) Subject to valid existing rights, the Pine Ridge National Recreation Area designated by this title shall be administered by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to the national forests in a manner compatible with the following objectives:

(1) the continuation of existing primitive and semiprimitive recreational use in a natural environment;

(2) preservation and protection of forests, aquatic and grassland habitat;

(3) protection and conservation of special areas having uncommon or outstanding wilderness, biological, geological, recreational, cultural, historical or archeological, and scientific, or other values contributing to the public benefit;

(4) the continuation of existing livestock grazing uses;

(5) the control of noxious weeds and insects and prevention of their spreading onto the nearby private and Federal lands; and

(6) the control of fires and prevention of their spreading onto nearby private and Federal lands.

(b) The Secretary shall enter into a Memorandum of Agreement with local and state fire fighting agencies and individuals to assure the best utilization of the firefighting resources available in the nearby communities for control of fire in the national recreation area.

(c) The Secretary shall permit hunting, fishing, and trapping on lands and waters under the Secretary's jurisdiction within the boundaries of the national recreation area designated by this title in accordance with applicable laws of the United States and the State of Nebraska.

(d) Subject to valid existing rights, all Federal lands within the national recreation area are hereby withdrawn from location, entry, and patent under the United States mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto.

(e) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Nebraska with respect to wildlife and fish in the national recreation area.

(f) Within eighteen months after the date of enactment of this Act, the Secretary shall develop and submit to the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a comprehensive management plan for the national recreation area designated by this title.

(g) In conducting the reviews and preparing the comprehensive management plan required by subsection (d), the Secretary shall provide for full public participation, and shall consider the views of all interested agencies, organizations, and individuals.

Amend the title so as to read: "An Act to establish the Pine Ridge National Recreation Area and Soldier Creek Wilderness in the State of Nebraska, and for other purposes.".

Mr. EXON. Mr. President, it is the greatest pleasure and pride that I rise in support of the Nebraska Wilderness Act.

I introduced this legislation in the U.S. Senate on March 28, 1985. In its original form, which passed the Senate without dissent on August 1, 1985, both the Soldier Creek and Pine Ridge areas of the Nebraska National Forest would be designated as national wilderness areas. It was supported by Senator ED ZORINSKY, Gov. Bob Kerrey, the Nebraska Game and Parks Commission, State Senator Sandra Scotfield, the local Chambers of Commerce and many other Nebraskans. The Reagan administration also supported my original bill for two wilderness areas.

The House of Representatives' Public Lands Subcommittee, under the chairmanship of Representative JOHN SEIBERLING of Ohio, held a field inspection and hearing at Chadron, NE last July. This action was followed by another House hearing in Washington, DC, last August, where certain objections were raised by Members of the Nebraska House Delegation.

Following consultations several weeks ago, I agreed to the changes included in the version of the bill which passed the House on September 23. Today, the Senate will pass those changes and send this important legislation to the President for signature into law. This new bill makes one change from the original version. Instead of both the Soldier Creek and Pine Ridge areas being designated as wilderness, the 8,100-acre Soldier Creek tract retains that designation while the 6,600-acre Pine Ridge tract will become a national recreation area. The difference between a wilderness area and a national recreation area is, in this case, mostly one in name only.

A wilderness area falls under the general laws and guidelines of the Wilderness Act of 1964. A national recreation area falls under no such general law and represents whatever Congress writes into the law for that particular area. In this case, I have ensured that the bill and report language of the national recreation area in the House-passed version closely mirror the guidelines of the Soldier Creek Wilderness Area.

Mr. President, my original legislation and the compromise we are considering now both contain safeguards to ensure prompt firefighting in and around these areas. There are also important provisions for the control of noxious weeds and insects and the continuation of cattle grazing. Hunting, fishing, and trapping rights are also protected.

For the Pine Ridge National Recreation Area, a comprehensive management plan will be formulated following consultations and full public participation. The recreation area will be managed in a manner compatible with "the continuation of existing primitive and semi-primitive recreational use in a natural environment." It is this Senator's intent, and that of the Senate, that the management plan closely follows this new language in the law and that it be strictly enforced. This means, for example, that no significant expansion of vehicular use within the national recreation area should be allowed. In this way, the "forest, aquatic and grassland habitat" to be protected by this designation will indeed be protected adequately as called for in this legislation.

This Nebraska Wilderness Act containing the Soldier Creek Wilderness and the Pine Ridge National Recreation Area will provide compatible and very similar management of both areas. It makes no sense to have these two nearby areas managed in a significantly different manner. The intent and letter of this new law support that objective.

While I would have preferred both areas being designated as wilderness, this compromise is acceptable in the interest of obtaining final passage in an expeditious fashion.

Mr. President, this legislation had many strong supporters on its way to becoming law. Vince Rotherham, the superintendent of the Fort Robinson State Park in Nebraska, comes first to mind. Also very helpful has been Ted Hoffman of Chadron, NE. In addition, Mr. Ron Ellermeier and Ms. Beth Spaugh of the Nebraska Sierra Club and Mr. Ron Klataske of the National Audubon Society worked hard for the passage of this legislation.

Finally, a big thank you is due to Representative JOHN SEIBERLING of Ohio, who shepherded this bill through the House of Representatives. He is a giant who will be sorely missed as a result of his well-deserved retirement at the end of this session of Congress. It is indeed fitting that the Nebraska Wilderness Act is one of the last additions to his long honor roll of accomplishments aimed at protecting America's most beautiful areas for generations to come.

Mr. President, as we prepare to move into the 21st century, it is important to remember that the best of God's

gifts to our wonderful country must be preserved. Once lost or exploited, they can never be reclaimed. The Nebraska Wilderness Act is an effort to be responsible and true to both our heritage and those who follow us on this Earth. To set aside this small part of Nebraska for our children, grandchildren, and generations who follow, to enjoy in solitude away from the rigors and commotion of everyday life, reflects well on all Nebraskans.

Our wisdom in approving this legislation today will pay a big dividend each time a man, women, or child enters the wilderness and finds the peace which will now always be there.

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

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

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

The motion to lay on the table was agreed to.

GAUCHER'S DISEASE AWARENESS WEEK

Mr. STEVENS. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 352, "Gaucher's Disease Awareness Week," and I ask for its immediate consideration.

Mr. BYRD. Mr. President, there is no objection to the requests of the distinguished Senator.

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

The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S. J. Res. 352) to designate the week of September 7, 1986 as "Gaucher's Disease Awareness Week."

AMENDMENT NO. 3225

(Purpose: To change the date provided in the bill)

Mr. BYRD. Mr. President, I send to the desk on behalf of Mr. METZENBAUM an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. METZENBUAM, proposes an amendment numbered 3225.

Strike out "September 7, 1986" wherever it appears and insert in lieu thereof "October 19, 1986."

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 3225) was agreed to.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The PRESIDING OFFICER. The Chair notes that without objection the title of Senate Joint Resolution 352 is appropriately amended.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the joint resolution, as amended, was passed.

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

The motion to lay on the table was agreed to.

EXECUTIVE CALENDAR

Mr. STEVENS. Mr. President, I would like to inquire of the minority leader if he is in a position to confirm any of the following Executive Calendar Nominations:

Calendar No. 1040, Martha O. Hesse;

Calendar No. 1041, James Allen Wampler;

Calendar No. 1077, Thomas John Josefiak;

Calendar No. 1078, Scott E. Thomas; and all nominations placed on the Secretary's desk with the exception of Edwin G. Corr.

Mr. BYRD. Mr. President, all the nominations including that of Martha O. Hesse, in particular, have been cleared on this side of the aisle. And we are ready to proceed with the confirmation of the nominations.

EXECUTIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations just identified, and that the nominations be considered en bloc and confirmed en bloc.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

The nominations considered and confirmed are as follows:

DEPARTMENT OF ENERGY

Martha O. Hesse, of Illinois, to be a member of the Federal Energy Regulatory Commission for the remainder of the term expiring October 20, 1987.

James Allen Wampler, of Illinois, to be an Assistant Secretary of Energy (Fossil Energy).

FEDERAL ELECTION COMMISSION

Thomas John Josefiak, of Virginia, to be a member of the Federal Election Commission for a term expiring April 30, 1991, to which position he was appointed during the last recess of the Senate.

Scott E. Thomas, of the District of Columbia, to be a member of the Federal Election Commission for a term expiring April 30, 1991.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE SENIOR FOREIGN SERVICE

Senior Foreign Service nominations beginning Harry E. Bergold, Jr., and ending Stanley J. Wolfe, M.D., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 11, 1986.

NOMINATIONS OF MARTHA O. HESSE AND J. ALLEN WAMPLER

Mr. McCLURE. Mr. President, on September 9, 1986, the Committee on Energy and Natural Resources held a hearing on the nominations of Martha O. Hesse to be a member of the Federal Energy Regulatory Commission, and J. Allen Wampler to be Assistant Secretary of Energy for Fossil Energy. Each nominee has fully complied with the committee's rules requiring submittal of a financial disclosure report and a detailed information statement.

On September 17, 1986, the Committee on Energy and Natural Resources ordered favorably reported each of the two nominations by voice vote.

Ms. Hesse has served as Assistant Secretary for Management and Administration at the Department of Energy since 1982. Before joining DOE, she was Executive Director of the President's Task Force on Management Reform. From February 1981 until her White House assignment, she was Associate Deputy Secretary of Commerce. Ms. Hesse's Government service was preceded by 15 years of management experience in the private sector. She is the cofounder of a successful data processing consulting company in Chicago, and she served as its director and chief operating officer from 1969 to 1980. She attended the University of Iowa and Northwestern University, and she received her MBA from the University of Chicago.

Ms. Hesse, upon her confirmation, will be designated by the President to serve as Chairman of the Commission. In this capacity, she will be responsible for general supervision of Commission personnel, as well as all other aspects of the Commission's administrative operations.

As Chairman of the Commission, she would be the chief administrative officer of an agency that has very broad and highly complex regulatory responsibilities, including setting wholesale rates for natural gas and electric energy, assessing the environmental impacts of hydroelectric projects and other energy facilities under its jurisdiction, and insuring the reliability of our Nation's electric energy supplies.

During her testimony before the committee, Ms. Hesse stressed the importance of energy as a critical component of our national security. She stated:

The decisions of the Federal Energy Regulatory Commission have long-term implications for our nation's energy security. Although the short-term outlook for energy supplies in the country appears good, consideration must be given to long-term supply security. Particularly, the long-term reliability of the national electric grid and the generating capacity available to supply that grid must be a concern. In addition, the Commission must consider the impact of falling oil and gas prices on the future adequacy of natural gas supply. We must take care to avoid a recurrence of the energy shortages of the 1970s.

J. Allen Wampler has been nominated for the position of Assistant Secretary for Fossil Energy. He is currently vice chancellor of administration at Illinois Eastern Community Colleges, and he previously served for 2 years as dean of Mining at Wabash Valley College in Illinois. During 1979 and 1980 Mr. Wampler was Deputy Director of Labor Management Relations for the President's Commission on Coal. He has also held various positions within the coal industry, and has taught in the West Virginia public school system.

As Assistant Secretary, Mr. Wampler will be responsible for formulating and directing a comprehensive national program to develop and demonstrate coal, oil, natural gas and shale technologies, as well as managing the naval petroleum reserve and the strategic petroleum reserve. He will also serve as the principal DOE spokesman on U.S. fossil energy policy and programs.

At his nomination hearing Mr. Wampler outlined the goals that he would bring to the Office of the Assistant Secretary for Fossil Energy. He stated that he would continue and strengthen the solid partnerships between his office, the private sector, academia, and other Federal agencies and the Congress. In addition, he would strive to improve the lines of communication necessary to insure that usable information produced by research and development is transferred in an understandable form, on a formalized periodic basis, to the private sector. An effort would be made to constantly evaluate the long-term fossil energy research efforts from the standpoint of continuing applicability and direction. He would also strive to ensure sound management of our Nation's petroleum reserves. Mr. Wampler's final goal would be to increase public awareness and understanding of the necessity for a diversified, balanced energy mix and the assets and liabilities of each ingredient of that mix.

Mr. President, on behalf of the Committee on Energy and Natural Resources, I am pleased that the Senate has approved these nominations.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

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

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate resume legislative session.

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

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Mr. STEVENS. Mr. President, I make the statement that it has not been a long day but a short night.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987—A FINE JOB WELL DONE

Mr. BYRD. Mr. President, would the distinguished acting Republican leader allow me? I inadvertently overlooked making a brief statement complimenting the distinguished chairman of the Committee on Appropriations, Mr. HATFIELD, and the distinguished ranking member of the Appropriations Committee, Mr. STENNIS, on their expert handling of the continuing resolution. Over a period of several days, those two Senators sat on the floor and patiently listened to other Senators debate amendments and handled the bill with expertise and great care. I think that each Senator had good reason to marvel at the forbearance and the equanimity that was shown by both of those Senators in the face of very stressful and trying circumstances.

I also wanted to express my compliments to Senator JOHNSTON, who worked with equal skill in managing that bill. He also showed consideration and characteristic understanding and courtesy to all Senators on both sides of the aisle as they presented their amendments.

There were scores of amendments offered to the continuing resolution. I am sure that the long, arduous action on that bill tried the patience of Senator HATFIELD, Senator STENNIS, and all Senators, and the distinguished majority leader as well.

I thank them and express appreciation in my own behalf and in behalf of Senators on this side of the aisle in particular, This was a good performance of resolute purpose and dedication to duty and the Senate is in their debt.

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

Mr. BYRD. I am happy to yield.

Mr. THURMOND. Mr. President, I wish to be associated with the remarks that have just been made about the handling of the continuing resolution. I do not think I have seen any bill in the years that I have been in the Senate that was handled in any more efficient and skillful manner than this bill was. The able chairman of the Appropriations Committee, Mr. HATFIELD, handled it in a masterful manner and so did Senator JOHNSTON and Senator STENNIS, who worked on the other side of the aisle. They were most gracious and helpful. I think we all owe these gentleman a great debt of gratitude for the efficient way in which they handled this measure.

Mr. BYRD. I thank the distinguished Senator from South Carolina, the President pro tempore and I think all three Senators will appreciate the gracious remarks made by Senator THURMOND.

Mr. THURMOND. Also, Mr. President, I commend the able majority leader and the able Democratic leader for the fine cooperation they gave in handling this matter. It could not have been handled as efficiently as it was if this had not been done with their help.

Mr. BYRD. If I may take 30 seconds more, Mr. President, I want to call attention also to the fact that the distinguished majority leader has been laboring under the stressful conditions of a bad cold. I guess all colds are bad, but this one was particularly so because the majority leader has had it for 10 days or 2 weeks.

I might also say the same thing for Senator HATFIELD, who came in today with laryngitis. It is not always easy to manage a bill under those conditions.

Mr. STEVENS. Having stood at this desk for a while, I hope it is not catching.

ORDERS FOR MONDAY, OCTOBER 6, 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate convenes on Monday, October 6, 1986, the reading of the Journal be dispensed with; that no resolutions come over under the rule; that the call of the calendar be dispensed with; and that following the recognition of the two leaders under the standing order, there be special orders in favor of Senators WILSON, DANFORTH and PROXMIRE, for not to exceed 5 minutes each; to be followed by a period for the transaction of routine morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for not more than 5 minutes each; and provided further that the morning hour be deemed to have expired.

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

Mr. BYRD. Will the distinguished acting Republican leader include in the list of special orders one for the Senator from Montana [Mr. BAUCUS]?

Mr. STEVENS. I amend my request to reflect that, Mr. President.

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

PROGRAM

Mr. STEVENS. To recap, the Senate will convene on Monday, October 6, at 12 noon. We will be in adjournment over the weekend. The two leaders will be recognized at that time under the standing order for 10 minutes each. There will then be special orders in favor of Senators WILSON, PROXMIRE, DANFORTH, and BAUCUS, for not to exceed 5 minutes each.

There will be a period for routine morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for not more than 5 minutes each. Following morning business, it is the intention of the majority leader to turn to any of the following items: S. 2792, which is the FIFRA bill and there is one vote expected, I am informed; or S. 2045, which is CFTC that we hope will be cleared for action by unanimous consent.

There will be conference reports presented, we believe, on intelligence authorization, Export-Import Bank, the handicapped bill, and the leadership has the intention to deal with other executive or legislative items that have been cleared for action at that time.

Votes can be expected on Monday; at least one is expected for certain.

Mr. BYRD. Is it the distinguished acting Republican leader's understanding that one vote which will occur on Monday will occur not prior to 2 p.m. that day?

Mr. STEVENS. Let me confirm that.

The PRESIDING OFFICER. The Chair advises that he remembers the majority leader did state that earlier in the day.

Mr. STEVENS. I thank the Chair. I was not here at that time and I have confirmation from our colleague who has stayed with us through this very routine business, handling very important documents.

CONFERENCE REPORT—H.R. 3773

Mr. STEVENS. Mr. President, I am told there is one additional item we could turn to with my good friend's agreement. That is consideration of the conference report to accompany H.R. 3773, the Federal Technology Transfer Act. That conference report is here now.

FEDERAL TECHNOLOGY TRANSFER ACT—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on H.R. 3773 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. HOLLINGS. Mr. President, the conference report now before the Senate is a truly historic piece of legislation. At a time when the U.S. economy faces unprecedented foreign competition, the Federal Technology Transfer Act will help government, industry, and academia work together to maintain America's technological leadership.

The Federal Government spends tens of billions of dollars annually on research and development. Federal laboratories alone spend some $18 billion and employ one-sixth of the Nation's scientists and engineers. Of course, the Federal Government makes this huge investment to serve public needs, particularly in the areas of defense, health, and space. But in the process, laboratory scientists and other federally supported researchers create a wealth of unclassified inventions and ideas which, if properly used, could be of enormous help to State governments and American industry. Yet, historically, legal barriers and lack of communication have prevented the private sector and the States from taking full advantage of this important national resource. With international competition so strong, we can no longer afford to ignore this technology.

The Federal Technology Transfer Act is the latest in a series of bipartisan initiatives to reduce these barriers. In 1980, the Stevenson-Wydler Technology Innovation Act directed Federal laboratories to create offices to assist in the transfer of Federal inventions and expertise. That same year, the landmark Bayh-Dole patent amendments gave small businesses and nonprofit organizations, including universities, the right to own and develop inventions that result from federally funded research. Until those amendments, most Federal inventions sat on the shelf, never used by American companies or universities. In 1984, these patent rights were extended to those nonprofit organizations that manage federally supported national laboratories. Already, these new laws are resulting in new products that help industry and benefit the American public.

The bill before us today is an important series of amendments to the original Stevenson-Wydler Act. This bill gives Federal agencies the authority to let their "Government-operated" laboratories—that is, laboratories operated by civil service personnel—enter into cooperative R&D work with industry, State government, universities, and others. For the first time, the Nation's almost 700 Government-operated laboratories will have clear authority to work side-by-side with industry and the States to better utilize unclassified Federal inventions and ideas. The agencies and laboratories will decide for themselves how much, and what kinds, of cooperative work to undertake.

This bill in no way reduces national security controls on classified Federal technology. Nor will it cost the taxpayers an additional dime. Any funds for cooperative research will be provided by the non-Federal partner. In fact, this new law will make money for the Government. When a Federal laboratory licenses an existing or new invention to a company, the laboratory may negotiate royalties. Even today the Government receives about $1.6 million per year in royalties from licensing inventions such as the new AIDS blood test. Royalties to the Government should increase under the new legislation.

Besides allowing Government-operated laboratories to work with non-Federal partners, the bill also has several other valuable provisions. It provides modest, stable funding for the existing network of laboratory technology transfer officers. This Federal laboratory consortium allows a businessman or State official to call their nearest Federal laboratory and, through the network, find out which Federal laboratories throughout the United States have expertise in a given area of technology. The FLC's modest funding is provided not through new expenditures but rather through a small set-aside from the Federal research agencies whose laboratories benefit from the network. The National Bureau of Standards will provide administrative support to the consortium.

The bill also provides that agencies will share some of the royalties earned

from Federal inventions with the scientists and engineers who created them. This provision is designed both to reward important work and to provide an incentive for scientists to report patentable ideas which may benefit the country. Agencies are allowed great flexibility in designing their royalty-sharing programs.

Finally, the bill contains various conforming and miscellaneous amendments to the Stevenson-Wydler Act.

Mr. President, this conference report results from a remarkable bipartisan effort. The House version of H.R. 3773 passed that body unanimously; its prime sponsors were a Democratic committee chairman and the House Republican leader. A bipartisan group of Senators introduced our version, which later passed this body unanimously. Both the Senate and House have benefited greatly from the work done by the Commerce Department's Office of Productivity, Technology, and Innovation.

Mr. President, all of us who have worked on this legislation see it as a vital step toward better utilizing our national R&D resources in an era of intense foreign economic competition. I am pleased to be an original cosponsor of the Federal Technology Transfer Act, and I urge my colleagues to support this conference report.

Mr. RIEGLE. Mr. President, I am delighted that we and our House colleagues have reached agreement on a conference report for H.R. 3773, the Federal Technology Transfer Act. This important legislation will allow our Federal laboratories to contribute more fully to American industrial innovation and State economic development. At a time when many other countries are challenging our technological leadership, we no longer can afford to ignore the great amount of technology created by the Nation's 700 Federal laboratories.

Federal laboratories exist, of course, to do research in support of Government missions in areas as diverse as agriculture, space, health, and defense. But in the process of serving the Government, Federal scientists and engineers also create a great deal of unclassified technology that could benefit American industry and State development efforts. Over the years, however, less than 5 percent of the almost 30,000 patents granted to personnel in Federal laboratories have been developed into commercial products.

We on the Commerce Committee's Subcommittee on Science, Technology, and Space have long supported efforts to transfer more Federal technology to the private sectors and States. Work on this particular bill began 2 years ago, when it became clear that many Government-operated laboratories—that is laboratories operated by Federal civil service personnel—lacked clear legal authority to enter into cooperative research projects with companies, State agencies, universities, and others. Yet never before have we seen such interest in working with Federal laboratories to commercialize new inventions, to undertake joint research, and to utilize the great expertise of Federal scientists and engineers. Clearly, we needed to reduce the legal barriers that prevent such cooperation.

The conference report before us today is the result of that work. It provides clear authority to Federal agencies to allow their Government-operated laboratories to enter into cooperative research and development agreements with non-Federal partners. It will, in my opinion, open up an entirely new era of American research—one in which Government, industry, and the States work together instead of in isolation of each other.

This bill has several notable features. It gives agencies and laboratories greater flexibility in deciding when to enter into cooperative research ventures, while stating Congress' view that preference should go to ventures which benefit both small business and companies that manufacture within the United States. The bill continues all existing protections for classified information while encouraging our laboratories to share unclassified technology.

This bill will not increase Federal expenditures. The cost of these joint research projects will be borne by the non-Federal partners. In fact, this bill could generate money for the Government by making it easier for Federal agencies to collect royalties on the inventions they license to industry. The legislation also provides rewards to Federal inventors whose ideas result in commercially successful products.

Mr. President, this is an important step toward the better utilization of the taxpayer's investment in Federal technology. The bill enjoys broad bipartisan support, and I urge our colleagues to vote for the conference report.

Mr. BAUCUS. Mr. President, I congratulate the Senate conferees for bringing this conference report to the floor. It is an extremely important bill, because it will do a lot to increase U.S. international competitiveness.

Each year the Federal Government spends $18 billion on research and development conducted at over 700 Federal laboratories. We employ one-sixth of our Nation's scientists in this effort. Yet, 95 percent of the work product of their efforts is unavailable for commercial development.

The Federal Technology Transfer Act of 1986 implements one of the recommendations of the Young Commission Report on Industrial Competitiveness by making it easier to transfer technology out of the Federal labs and into the marketplace.

This bill grants blanket authority to all Federal laboratories to set up cooperative research-and-development agreements with businesses. As Timothy Smith reported in the Wall Street Journal on October 1, 1986, "It will provide money to expand a communications system linking Federal labs, and giving businesses centralized access to a smorgasbord of government research."

Most importantly, the bill will create incentives for Federal researchers to stay on the job by requiring agencies to share at least 15 percent of the royalties received from their patents.

Mr. President, in his book "The Zero Sum Solution," economist Lester Thurow stated that the essence of comparative advantage is not static relative factor endowments or natural resources, but the creation of dynamic technological or efficiency advantages.

Comparative advantage is not something inherited. It's created—as the Japanese are doing now, and as America has done in the past.

The United States used to have the technological edge. It no longer does. While countries like Japan and West Germany coordinate ressearch and development between the public and private sectors and then share the information with their businesses, American policy is to bottle it up and fail to coordinate its use.

The Federal Technology Transfer Act is a major step toward strategic coordination of our research and development that will improve our industries' performance in world markets. I urge my colleagues to support this bill.

Mr. ROCKEFELLER. Mr. President, I am pleased to join my colleagues from the Commerce Committee in urging final passage of H.R. 3773, the Federal Technology Transfer Act.

This measure is about technological innovation, and about the process of turning inventions into marketable products and services. It recognizes that Federal laboratories represent a promising resource and provides a way to strengthen the links between government scientists and researchers in the private sector.

The Stevenson-Wydler Technology Innovation Act of 1980, which this bill amends, attempted to focus national attention on the issue of technology transfer. Regrettably, it was never fully implemented. But despite the administration's opposition to the act's central feature, a network of government-industry research centers, progress was made within individual agencies to encourage commercial applications of technology developed under their auspices.

Building on this fledgling effort, H.R. 3773 would facilitate cooperative research projects by Federal laborato-

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ries and private companies. The Government invests approximately $18 billion on research by Federal laboratories, and much of this work leads to patentable inventions. Yet only a small fraction of these Federal patents are licensed by private industry for commercial use.

In contrast, other countries—particularly Japan—are blazing the trail in the area of technology transfer. They encourage cooperative government-industry research efforts, and actively look for ways to translate the results of promising lines of research into commercially viable products. Japan has been exceptionally adept at identifying technology with commercial potential. And the inventions with commercial promise—the raw material of this process—often comes from us.

This country should be concerned about the implications of a one-way flow of technological information. The current imbalance in the international flow of knowledge is a real threat to our competitive position in a wide range of industries. America's comparative advantage has always been superior technology—our ability to innovate and invent. But we are no longer self-sufficient in technology: without access to technology developed elsewhere, major advances will pass us by.

I am very pleased that the final version of H.R. 3773 incorporates a Senate amendment, which I jointly sponsored with the distinguished majority leader, to improve U.S. access to technology developed with the help of foreign governments. Under the bill, foreign applicants will have opportunities to acquire technology developed in our laboratories—and we think our companies and researchers should get equivalent treatment by other countries in return.

Federal laboratory directors are empowered by this legislation to approve cooperative R&D arrangements and licensing agreements with private industry. Where applications to enter into these agreements come from foreign parties, our provision would permit the laboratory directors to take into account whether or not the countries involved permit U.S. agencies, companies, or other parties to participate in similar arrangements. It would apply to U.S. subsidiaries of foreign companies, as well as to other persons and organizations subject to the control of a foreign government.

We hope, by giving this discretion to our Federal laboratories, to open doors for our corporations and researchers to the work in foreign government-supported laboratories. By making reciprocal access a consideration, we should increase our leverage with foreign research organizations—and gain access to much valuable technical information. If foreign scientists, engineers, and other researchers can have relatively unrestricted access to path-breaking research at NIH or NASA, it's only right to expect comparable opportunities for our researchers in exchange.

In closing, I consider this legislation an important element of what should be a comprehensive, determined effort to improve the competitiveness of our industries. It will encourage industry to draw on the impressive technological resources and expertise of our Federal laboratories. It will strengthen our national investment in R&D—and help this country gain access to pioneering research and technology developed elsewhere. I'm proud to have worked on this measure and hope it will encourage us to address other aspects of our competitiveness problems with the same imagination and vigor.

Mr. STEVENS. Mr. President, I ask the Senate to adopt the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. STEVENS. I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. STEVENS. I inquire if there is anything further to come before the Senate at this time?

Mr. BYRD. I answer my distinguished friend first by saying that I thank him for his diligent handling of the business so late in this long, long day. I thank him for his usual courtesy. I have no further business.

Mr. STEVENS. I thank my good friend. It is a pleasure to be with him again.

ADJOURNMENT UNTIL MONDAY, OCTOBER 6, 1986

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in adjournment, in accordance with the previous order, until Monday, October 6, 1986, at noon.

There being no objection, the Senate at 7:37 p.m., adjourned until Monday, October 6, 1986, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate October 3, 1986:

Department of State

Stephen R. Lyne, of Maryland, a career member of the senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ghana.

Department of Defense

Robert B. Costello, of Michigan, to be an Assistant Secretary of Defense, vice James Paul Wade, Jr.

The Judiciary

Reena Raggi, of New York, to be U.S. district judge for the eastern district of New York vice Frank X. Altimari, elevated.

Department of Justice

Eugene H. Davis, of Utah, to be U.S. Marshal for the district of Utah for the term of 4 years, reappointment.

Department of the Interior

James W. Ziglar, of Maryland, to be an Assistant Secretary of the Interior, vice Robert N. Broadbent, resigned.

Department of Agriculture

Peter C. Myers, of Missouri, to be a Member of the Board of Directors of the Commodity Credit Corporation, vice John R. Norton III, resigned.

Corporation for Public Broadcasting

Sheila Tate, of Virginia, to be a member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 26, 1991, vice Lillie E. Herndon, term expired.

National Science Foundation

Howard A. Schneiderman, of Missouri, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992, vice Mary Jane Osborn, term expired.

U.S. Postal Service

Norma Pace, of Connecticut, to be a Governor of the U.S. Postal Service for the term expiring December 8, 1994, vice George Watson Camp, term expired.

Securities Investor Protection Corporation

James G. Stearns, of Nevada, to be a member of the Board of Directors of the Securities Investor Protection Corporation for a term expiring December 31, 1988 reappointment.

In the Marine Corps

The following-named officer of the Marine Corps for permanent appointment to the grade of lieutenant colonel, under title 10 United States Code, section 624:

Peter J. Burner, 8615

The following-named officers of the Marine Corps for permanent appointment to the grade of major, under title 10 United States Code, section 624:

Alfred B. Legear, xxx-...

Bruce H. Norton, xxx-...

In the Navy

The following-named U.S. Naval Reserve officers, to be appointed permanent commander in the line of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Neel, David L.

The following-named U.S. Naval Reserve officers, to be appointed permanent lieutenant commander in the line of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Ade, Edward Kenneth
Bachman, Stephen D.
Battle, Joseph Ceasar,
Bradley, Stephen Craig
Bricker, Martin P.
Buesser, Frederick M.
Caille, Gary W.
Case, Duane D.
Deeble, Kenneth M.

Driskill, Clifford Dale
Egan, Richard Thoma
Goddard, Paul Earnest
Graham, Bruce Alan
Green, Ronald Timothy
Keeley, Thomas Francis
Lusted, Roderick M.
McCarthy, Karen Patricia
McMahon, Christine Marie
Morel, David
Morganelli, Patrick Daniel
Morin, John Patrick
Palmer, Thomas R.
Parsons, David Lee
Pierce, Charles James., Jr.
Podenak, Gary Lawrence
Roberts, John Alan
Rynda, Douglas Charles
Saunders, Stanley L.
Selberg, John J.
Thomas, William Franklin
Upchurch, Robert Burton
Webb, Michael Anthony
Wenceslao, Daniel Lathrop
Wilbur, Thomas George
Wright, Robert Paul

The following-named U.S. Naval Reserve officers, to be appointed permanent captain in the medical corps of the U.S. Navy, pursuant to title 10, United States Code section 531:

Arnold, Robert Evans
Bartlett, John Donnington
Carlisle, James Henry, IV
Gambone, Joseph C.
Mitas, John Albert II
Ragland, Jerry John
Rainey, Thomas Gilman
Thomas, William Joseph, Jr.

The following-named U.S. Naval Reserve officers, to be appointed permanent commander in the medical corps of the U.S. Navy, pursuant to title 10, United States Code section 531:

Adams, David B.
Anderson, Mary Alice
Andersonprotzel, Cris Jana
Babcock, Nolan C.
Baer, Karl Guther
Batten, George B.
Batten, Kristine W.
Bergfield, Thomas G.
Boice, Douglas Brittin
Boston, Edward G.
Brower, Richard A.
Bundens, Warner Perry
Calebaugh, Donald L.
Carson, John Frederick, II
Chobanian, Sarkis J.
Clement, Patrick A.
Clemons, Peter Michael
Coleman, Claude Leroy
Congleton, Michael W.
Corrall, Carmen J.
Cueva, Mary Carolina
Davee, Thomas Southerland
Davenport, Nicholas Antony
Ducatman, Alan M.
Eastman, Thomas Wayne
Eaton, Peter Wesley
Elledge, Elliott Frederick
Ferry, Philip J. III
Foote, Norman Noel
Galdi, Albert Peter
Gilson, Kim Fricke
Goldstein, Richard S.
Gonzalez, Xavier L.
Goodman, Floyd Keith
Greif, Jon Meredith
Hamelberg, Kim S.
Hansen, Harold Wayne
Harvey, Joan
Haviel, Jay Duncan
Hayes, Francis M., Jr.
Hickey, Therese Marie
Hoffman, Stephen Lev
Hoskins, Iffat Abbasi
Howard, Richard Karl
Howell, Harold Blane
Hynd, Robert F.
Jaindl, Jeffrey J.
Johnson, Wayne T.
Jones, Edgar T.
Khan, Anjum
Larosa, John Joseph
Liston, William A.
Luhn, Roderick F.
Lundgrin, Daryl Brent
Martin, Lawrence K., Jr.
Mathis, William F.
Mayo, Joseph F., Jr.
Mciver, Ronald Allen
Miller, Stephen A.
Miller, William Farrington
Moore, Thomas R.
Nanfro, John J.
Newcomer, John Allen
Olafson, Raymond Paul
Opoliner, Lawrence Harvey
Paleologo, Fred Peter
Pon, Eugene
Prophete, Robert Y.
Ray, Joel W.
Rice, Linda J.
Scherokman, Barbara Jeanne
Scotti, Frank A.
Shea, William Michael
Simpkins, Cuthbert Ormond II
Smyth, Lawrence T., Jr.
Tanksley, Radford D.
Terbush, James Wayne
Turner, James Angus
Turner, Sibley N.
Warren, Tony E.
White, John M., Jr.
Whitman, Monroe Calvin III
Wilson, George Charles
Wilson, Terence Scott
Wittgrove Allan Craig
Yunan, Evelina
Zaloga, Gary P.

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the medical corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Herip, Donald S.

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the supply corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Davison, Dexter Oneal
Halloran, Michael D.

The following-named U.S. Naval Reserve officers, to be appointed permanent commander in the chaplain corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Foster, Raymond Orville
Kurilec, Robert Edward
Pucciarelli, George W.

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the judge advocate general's corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

McPherson, James E.

The following-named U.S. Naval Reserve officer, to be appointed permanent commander in the dental corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Bookwalter, Charles

The following-named U.S. Naval Reserve officer, to be appointed permanent lieutenant commander in the dental corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Conway, Richard

The following-named U.S. Naval Reserve officers, to be appointed permanent lieutenant commander in the medical service corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Boenecke, Clayton A.
Crisman, Ronald Paul
Hannah, Ken Evan
Heller, Randal George
Kersbergen, John J.
Lacy, Nathan
Reibling, John S.
Roth, Faye A.
Sandoval, Paul R.
Schuyler, Christopher
Sebbio, Anthony A.

The following-named U.S. Naval Reserve officer, to be appointed permanent commander in the nurse corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Kraper, Mary Julie

The following-named U.S. Naval Reserve officers, to be appointed permanent lieutenant commander in the nurse corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Brennan, Rama F.
Elliott, Karen G.
Moos, Magdalene A.
Romine, Carol A.
Twomey, John G.

CONFIRMATION

Executive nomination confirmed by the Senate October 3, 1986:

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

To be general

Gen. Fred K. Mahaffey, xxx-xx-xxxx, age 52, U.S. Army.

DEPARTMENT OF ENERGY

Martha O. Hesse, of Illinois, to be a member of the Federal Energy, Regulatory Commission for the remainder of the term expiring October 20, 1987.

James Allen Wampler, of Illinois, to be an Assistant Secretary of Energy (Fossil Energy).

FEDERAL ELECTION COMMISSION

Thomas John Josefiak, of Virginia, to be a member of the Federal Election Commission for a term expiring April 30, 1991.

Scott E. Thomas, of the District of Columbia, to be a member of the Federal Election Commission for a term expiring April 30, 1991.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

SENIOR FOREIGN SERVICE

Senior Foreign Service nominations beginning Harry E. Bergold, Jr., and ending Stanley J. Wolfe, M.D., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 11, 1986.